TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908

No. [redacted]70.

SALLIE J. McDANIEL, NANNIE A. HOSHALL, AND MARY E. JACKSON, APPELLANTS,

vs.

GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED MAY 1, 1908.

(20,687.)

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SUPREME COURT OF THE UNITED STATES.

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1 In the United States Circuit Court for the Eastern Division of the Eastern District of Arkansas.

Be it remembered, that on the 27th day of March, 1902, complaint in equity was filed in the clerk's office of said court, which record entry and complaint are in words and figures following, to-wit:

Record Entry on Filing Bill of Complaint.

March 27th, 1902.

105.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Complainants,

vs.

GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, SOLON Palmer, Crunden-Martin Woodenware Company, a Corporation; Meyer Brothers Drug Company, a Corporation; Liquid Carbonic Acid Manufacturing Company, a Corporation; The Dr. J. H. McLean Medicine Company, a Corporation; Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, a Corporation; National Lead Company, a Corporation; Henry W. Hoyt, Administrator of the Estate of John W. Andrews, Deceased; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, a Corporation; Van Vleet-Mansfield Drug Company, a Corporation; Claus Shear Company, a Corporation; The Coco Cola Company, a Corporation; Alfred Wright, Meriden Silver Plate Company, a Corporation, and C. F. Simmons Medicine Company, a Corporation, Defendants.

Now on this day come the complainants, by their solicitors, Messrs. G. B. Webster and J. R. Beasley, and file their bill of complaint against the defendants herein.

Attest: EMERSON R. CRUM, *Clerk.*

2 *Bill of Complaint.*

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Arkansas.

Equity.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Complainants,

vs.

GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, SOLON Palmer, Crunden-Martin Woodenware Company, a Corporation; Meyer Brothers Drug Company, a Corporation; Liquid Carbonic Acid Manufacturing Company, a Corporation; The Dr. J. H. McLean Medicine Company, a Corporation; Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, a Corporation; National Lead Company, a Corporation; Henry W. Hoyt, Administrator of the Estate of John W. Andrews, Deceased; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, a Corporation; Van Vleet-Mansfield Drug Company, a Corporation; Claus Shear Company, a Corporation; The Coco Cola Company, a Corporation; Alfred Wright, Meriden Silver Plate Company, a Corporation, and C. F. Simmons Medicine Company, a Corporation, Defendants.

To the honorable the judges of the circuit court of the United States for the eastern division of the eastern judicial district of Arkansas, sitting in equity:

Sallie J. McDaniel, Nannie A. Hoshall and Mary E. Jackson, citizens and residents of the State of Arkansas within the meaning of the laws fixing the jurisdiction of this honorable court, bring this their bill of complaint against George M. Traylor, John F. Stratton, John F. Smith, Alfred Wright and Solon Palmer, citizens and residents of the State of New York, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, C. F. Simmons Medicine Company, the Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer Bendheim, Carl Bendheim, Henry W. Hoyt, administrator of the estate of John W. Andrews, deceased, citizens and residents of the State of Missouri, A. S. Aloe Company, a citizen and resident of the State of Illinois, National Lead Company, a citizen and resident of the State of New Jersey, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt,

3 Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpmann, Memphis Paper Company and Van Vleet-Mansfield Drug Company, citizens and residents of the State of Tennessee, Meriden Silver

late Company, a citizen and resident of the State of Connecticut, laus Shear Company, a citizen and resident of the State of Ohio, nd the Coco Cola Company, a citizen and resident of the State of eorgia, within the meaning of the laws fixing the jurisdiction of is honorable court; and thereupon your orators show unto your onors:

1. That Crunden-Martin Woodenware Company, Meyer Brothers rug Company, Liquid Carbonic Acid Manufacturing Company, e C. F. Simmons Medicine Company, and the Dr. J. H. McLean edicine Company are corporations organized and existing under nd by virtue of the laws of the State of Missouri. That Augusta irschl, Meyer H. Bendheim and Carl Bendheim are copartners nder the firm name of Hirschl and Bendheim; that William N. Vilkerson and Thomas H. Chilton are co-partners under the firm ame of W. N. Wilkerson and Company; that J. C. Mendenhall nd John Doe are co-partners under the firm name of J. C. Menenhall and Company; that Abraham Goodman and Benjamin oodman are co-partners under the firm name of Goodman Brothers; at Solomon Sternberg, David Sternberg and William H. Sternerg are co-partners under the firm name of Sternberg and Sons; at Henry W. Hoyt is the administrator of the estate of John W. ndrews, deceased; that A. S. Aloe Company is a corporation ornized and existing under and by virtue of the laws of the State Illinois, and that National Lead Company is a corporation exting under and by virtue of the laws of the State of New Jersey; at Meriden Silver Plate Company is a corporation organized and isting under and by virtue of the laws of the State of Connecticut nd that Claus Shear Company is a corporation organized and existg under and by virtue of the laws of the State of Ohio, and the oco Cola Company is a corporation organized and existing under nd by virtue of the laws of the State of Georgia; and that Memhis Paper Company and Van Vleet-Mansfield Drug Company are orporations organized and existing under and by virtue of the ws of the State of Tennessee.

2. And your orators further show unto your honors that the runden-Martin Woodenware Company is the successor in interest the Martin Woodenware Company in the matters and things ereinafter mentioned, and that the National Lead Company has eretofore acquired and now owns all the assets and property forerly belonging to the Collier white lead and oil works, including e claim and demand hereinafter described and charged to have een allowed in favor of said lead and oil works, and that Henry . Hoyt, administrator of the estate of John W. Andrews, deceased, as heretofore acquired and succeeded to all the interest of J. W. Andrews and Company in and to the claim and demand hereinafter mentioned and charged to have been allowed in favor of said J. W. Andrews and Company against the estate Hiram Evans, deceased, and that Van Vleet-Mansfield Drug Comany has succeeded to all the interest of Van Vleet and Company the matters and things hereinafter stated.

3. And your orators further show unto your honors that on the

13th day of April, 1891, one Hiram Evans, then resident in the county of St. Francis, in the State of Arkansas, died intestate, possessed of a large amount of personal property, exceeding in value the sum of twelve thousand dollars, and seized in fee of the following described real estate located in the said county and State, to-wit:

S. E. ¼ of section 9,
S. ½ of S. W. ¼ section 9,
S. W. ¼ of section 10,
S. E. ¼ of S. E. ¼ of section 10,
S. ½ of N. E. ¼ of section 10,
S. W. ¼ of N. W. ¼ of section 9,
N. W. ¼ of N. E. ¼ of section 16,
N. E. ¼ of N. W. ¼ of section 16,
S. ½ of N. E. ¼ of section 16,
N. W. ¼ of S. W. ¼ of section 16,

all in township four (4) and in range three (3) east, and containing in all 760 acres of land more or less, which said real estate was and still is of the value of about sixteen thousand dollars; that the said Evans left him surviving as his only heirs at law, your orators and their three brothers James Evans, William E. Evans and John Evans.

4. That on the 21st day of April, 1891, James Evans, one of the sons of the said Hiram Evans, was duly appointed by the probate court of St. Francis county aforesaid, administrator of the estate of said Hiram Evans, deceased, and thereafter, to-wit, on the 4th day of May, 1891, duly qualified as such and received letters testamentary and proceeded to take possession of all the assets of said estate, and that the said James Evans continued to act as such administrator until the time of his death as hereinafter set forth, but wholly failed and neglected to make any settlements of his accounts with the said estate in the manner and form required by law.

5. And your orators further show unto your honors that among the assets of the said Hiram Evans, deceased, which came into the hands of his said administrator was a certain drug store in the town of Forrest City, Arkansas, together with all the stock of goods, fixtures, book accounts and other chattels contained therein, all of which the said administrator on or about the 1st day of May, 1891, sold and delivered to one John Evans; that the said John Evans thereupon took possession of the same and operated and conducted the said business in his own name and that while so operating and conducting the same he, the said John Evans, contracted and
5 incurred debts and obligations to the several defendants herein, aggregating the sum of three thousand dollars ($3000.00), as well as debts and obligations to various other persons, and thereafter became and was insolvent and unable to pay his said debts and obligations in full. That on or about the 27th day of May, 1892, the said John Evans transferred and delivered to the said James Evans, administrator, the said drug store and all that then remained of the stock of goods, fixtures and book accounts, and thereby rendered himself wholly and totally insolvent. That

thereupon the defendants herein conspired, colluded and confederated together and with the said John Evans and with the said James Evans, administrator, to secure the payment of their said claims and demands against the said John Evans, out of the assets of the said estate of Hiram Evans, deceased, and, so conspiring and confederating, the said defendants presented to the probate court of St. Francis county, Arkansas, and the said James Evans, administrator, fraudulently and illegally approved for allowance against the estate of said Hiram Evans, deceased, the several claims and demands against the said John Evans held by the said defendants, as follows, to-wit:

Geo. M. Traylor	$21.88
The Claus Shear Co	24.48
Solon Palmer	26.44
Hirschell & Bendheim	17.50
Goodman Bros.	15.00
Jno. F. Stratton & Son	71.28
Coco Cola Co	14.90
Jno. F. Smith	32.43
Liquid Carbonic Acid Mfg. Co	4.00
W. N. Wilkerson & Co	589.88
A. S. Aloe Co	4.23
The Dr. McLean Med. Co	6.80
Meyer Bros. Drug Co	548.98
Meyer Bros. Drug Co	400.71
Meyer Bros. Drug Co	284.17
Martin Wooden Ware Co	34.61
C. F. Simmons Med. Co	59.27
Collier white lead and oil works	35.63
J. C. Mendenhall Co	23.89
J. W. Andrews Co	33.45
Harpman Bros.	88.25
R. Kupperschmidt	34.94
Van Vleet & Co	15.85
Alfred Wright	73.53
Meriden Silver Plate Co	125.69
Meriden Silver Plate Co	125.69
The Memphis Paper Co	8.85
Sternberg & Son	45.25

6 And they, the said defendants and the said administrator, still conspiring and confederating together, procured the judgment of the said probate court establishing the same against the said estate by concealing from the said court the fact that the same were the debts and obligations of the said John Evans and cloaking the same under the name of expenses of administration of the said estate, all of which transactions were part of the same scheme and were participated in by each and all of the said defendants and by said John Evans and said James Evans, administrator.

6. And your orators further show unto your honors that the said

probate court was by the law of the State of Arkansas wholly without jurisdiction to render judgment establishing the said claims and demands of the defendants herein against the said estate of Hiram Evans, deceased, even though their said claims and demands had been for goods, wares and merchandise sold and delivered to the said administrator instead of to the said John Evans, and that by reason of the premises all the proceedings in said court touching the said judgments were *coram non judice* and null and void; and that the said judgments of said court establishing and allowing the respective claims and demands of the defendants herein against the said estate were wholly the result of the conspiracy and confederation hereinbefore mentioned, and the fraud practiced in pursuance thereof as aforesaid, and are, therefore, in equity and good conscience, void and ineffectual for any purpose whatsoever and ought not to be enforced, but that nevertheless the same are at law liens upon the real estate hereinbefore described and charges against the respective interests of your orators therein.

7. And your orators further show unto your honors that in pursuance of the conspiracy and confederation hereinbefore mentioned, they, the defendants herein and the said John Evans and the said James Evans, concealed from your orators the matters and things hereinbefore complained of, and failed to disclose to your orators the sale of the said drug store to the said John Evans, and the fact that the said claims and demands of the defendants herein were the personal debts and obligations of the said John Evans; that your orators were unable and did not discover the same until long afterwards, but that immediately upon such discovery your orators filed their bill in the chancery court of St. Francis county, Arkansas, in April, 1895, against these defendants, or their predecessors in interest, setting up, among other things, the matters and things hereinbefore complained of, and that after a hearing their said bill was by the said court dismissed, from which action and ruling of the said court your orators prosecuted their appeal to the supreme court of Arkansas where the judgment of said chancery court was affirmed, but without prejudice to your orators as to any of the claims and demands of the defendants herein, all of which more fully appears from the mandate of said supreme court, a copy of which, marked "Exhibit A" is herewith filed and made part hereof;

7 that thereupon your orators, acting upon the advice of counsel, set up the matters and things herein complained of by way of cross-bill and defense to a certain petition praying that a day be set for the sale under a previous order of sale of the real estate in the first paragraph of this bill of complaint mentioned and described for the purpose of paying certain claims allowed against the said estate of Hiram Evans, deceased, among which were the claims and demands hereinbefore mentioned, which said petition was on the 15th day of January, 1900, filed in the probate court of St. Francis county, Arkansas, by H. P. Gorman, administrator *de bonis non* of the said estate of Hiram Evans, deceased, and was then pending in the circuit court of the said county on appeal; that the said cross-bill of your orators pended continu-

ously in the said circuit court and in the supreme court of Arkansas until the 11th day of January, 1902, when it was held and determined by the said supreme court that neither the said probate court nor the said circuit court on appeal had jurisdiction to hear or determine equitable issues, and that your orators' remedy lay in an original proceeding in a court of competent chancery jurisdiction, and that the said action and ruling of the said supreme court was without prejudice to your orators' beginning and maintaining this bill of complaint.

8. And your orators further show unto your honors that under the law of the State of Arkansas the aforesaid judgments of the probate court of St. Francis county, Arkansas, allowing and classifying the said false, fraudulent and fictitious claims and demands of the said defendants, passed beyond the control of said probate court at the expiration of the term at which the same were rendered, and that thereafter it was not within the power of the said probate court to alter, amend or set aside the same; that the time within which your orators might have taken an appeal, or have compelled the said administrator to take an appeal from the said judgment, had expired long prior to the time when your orators acquired knowledge of the matters and things hereinbefore complained of; and that by reason thereof your orators are wholly without remedy in the premises unless the relief hereinafter prayed be granted.

9. And your orators further show unto your honors that all the acts and doings of the defendants toward procuring the said judgments of the probate court of St. Francis county, Arkansas, were wrongful, fraudulent and inequitable, and tend to the manifest wrong, injury and oppression of your orators, and that in equity and good conscience the said defendants ought not to have or enjoy the benefit or advantage of the said judgments.

10. In consideration whereof and for as much as your orators are without remedy in the premises and can only have relief in a court of equity, where matters of like nature are properly coznizable; to the end, therefore, that your orators may have the relief which in good conscience they ought to have, your orators pray the aid of this honorable court and that the said judgments of the probate court of St. Francis county, Arkansas, be set aside and for
8 naught held and esteemed, and be decreed not to be valid or lawful liens upon or against the real estate described in the first paragraph hereof, or upon or against the right, title and interest of your orators in the same; and that the defendants be forever enjoined and restrained from asserting or attempting to assert or enforce the said judgments or to take any manner of benefit, profit or advantage thereunder; and that, all the defendants herein being without the limits of the jurisdiction of this court and beyond the reach of subpœna, your honors may grant an order directing that they be notified of this proceeding by publication, according to the provisions of the act of Congress approved March 3rd, 1875; and that the defendants may answer, but not under oath (such oath being hereby waived), according to the practice in equity, all and singular, the matters and things hereinbefore charged and stated, and may stand

to, abide and perform all such orders, directions and decrees as may be made against them in the premises.

And your orators pray your honors to grant unto them such other and further relief in the premises as the circumstances may require and as may be meet and agreeable to equity and good conscience.

And your orators, as in duty bound, will ever pray.

G. B. WEBSTER AND
J. R. BEASLEY,
Solicitors for Complainants.

STATE OF ARKANSAS, *County of St. Francis, ss:*

Mrs. Mary E. Jackson, one of the complainants in the foregoing bill of complaint, makes oath and says that the statements therein contained are true, except such as are alleged to be made upon information and belief, and those she verily believes to be true.

MARY E. JACKSON.

Subscribed and sworn to before me, this the 26th day of March 1902.

S. H. MANN,
[SEAL.] *Notary Public, St. Francis County, Arkansas.*

My commission expires Dec. 18th, 1904.

Endorsed: No. 105. In the cir. ct. of U. S. for east. div. o east. jud. dist. of Arkansas. Sallie J. McDaniel, *et al.* plaintiff, *vs* George M. Traylor, *et al.* defendants. Equity. Filed March 27th 1902. Emerson R. Crum, clerk. Copy of within complaint handed R. W. Nicholls, Esq., attorney, this April 4th, 1902. Emerson R Crum, clerk. Copy of within bill mailed Messrs. Norton & Prewett Forrest City, Ark., this Apr. 4, 1902. Emerson R. Crum, clerk Copy of within complaint handed R. W. Nicholls, att'y, this Decem ber 2nd, 1902. Emerson R. Crum, clerk.

9 EXHIBIT "A."

Mandate.

STATE OF ARKANSAS, *In the Supreme Court, sct:*

Be it remembered that — a term of the supreme court of the Stat of Arkansas begun and held at the court house in the city of Littl Rock, on the 22nd day, being the 4th Monday of May, A. D. 189 amongst others were the following proceedings, on the 25th day o November, 1899, a day of said term:

W. E. EVANS ET AL., Appellants,

vs.

E. A. ROLFE, Adm'r Estate of James Evans, Dec'd, *et al.*, Appellees.

Appeal from St. Francis Circuit Court, in Chancery.

This cause came on to be heard upon the transcript of the record of the circuit court of St. Francis county in chancery, and was argued by the solicitors of the parties, in consideration whereof it is the opinion of the court that there is no reversible error in the proceedings and decree of said circuit court in chancery in this cause.

It is therefore ordered and decreed that the decree of said circuit court in chancery in this cause be and the same is hereby in all things affirmed with costs, but without prejudice to appellants as to the debts accruing subsequent to the death of H. Evans; the injunction issued in this cause is hereby dissolved.

It is further ordered and decreed that said appellees recover of said appellants all their costs in this court, in this cause expended, and have execution thereof as upon judgments at law.

In testimony that the above is a true copy of the decree of said supreme court therein, I, P. D. English, clerk of said supreme court, hereto set my hand and affix the seal of said court, at my office in the city of Little Rock, this Jan. 9, 1900.

[SEAL.] P. D. ENGLISH, *Clerk.*
By J. H. CAMPBELL, *D. C.*

Endorsed: Filed Mar. 27, 1902. Emerson R. Crum, clerk.

10 *Bond for Costs.*

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

SALLIE J. MCDANIEL ET AL., Plaintiffs,

v.

GEORGE M. TRAYLOR ET AL., Defendants.

We, Sallie J. McDaniel, Nannie A. Hoshall and Mary E. Jackson, principals, and Will Kirk and M. W. Sipes, sureties, acknowledge ourselves indebted to George M. Traylor, *et al.*, the defendants named in the above mentioned suit, in the sum of two hundred dollars; to be void if the said Sallie J. McDaniel, Nannie A. Hoshall, and Mary E. Jackson shall prosecute with effect an action which they are about to commence in the United States circuit court for the eastern division of the eastern district of Arkansas at Helena, against the said George M. Traylor *et al.;* or, if they fail to do so,

shall pay all such costs as may be awarded against them by any court having cognizance thereof, by appeal or otherwise.

SALLIE J. McDANIEL,
NANNIE A. HOSHALL, AND
MARY E. JACKSON, *Principals*,
By J. R. BEASLEY, *Attorney*.
WILL KIRK,
M. W. SIPES, *Sureties*.

Approved:
EMERSON R. CRUM, *Clerk*.

FORREST CITY, ARK., *M'ch* 26, 1902.

To all whom it may concern:

I hereby certify, that Mr. Will Kirk a merchant of Forrest City, Ark., has two thousand and forty five ($2045.00) of personal property assessed to him of the personal tax book of St. Francis county, Arkansas, and that Mr. M. W. Sipes, a merchant of Forrest City, Ark., has one thousand and fifty (1050.00) dollars, in personal property assessed to him on the personal tax book of St. Francis county, Arkansas. I further certify that either of the gentlemen are good for a two hundred ($200.00) dollar bond.

EUG. WILLIAMS,
Deputy Collector.

Endorsed: No. 105. In the U. S. circuit court, at Helena, Arkansas. Sallie J. McDaniel, *et al.*, *v.* George M. Traylor, *et al.* Bond for cost. Filed March 27th, 1902. Emerson R. Crum, clerk.

11 *Petition for Order of Service.*

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

105.

SALLIE J. McDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Plaintiffs,
v.
GEORGE M. TRAYLOR ET AL., Defendants.

The undersigned, Sallie J. McDaniel, Nannie A. Hoshall, and Mary E. Jackson, would respectfully state and show to the court that this is a suit commenced in the circuit court of the United States for the eastern division of the eastern district of Arkansas between Sallie J. McDaniel, Nannie A. Hoshall, and Mary E. Jackson, citizens of the State of Arkansas, plaintiffs, against George M. Traylor, John F. Stratton, John F. Smith, Alfred Wright, and Solon Palmer, citizens and residents of the State of New York; Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, C. F. Simmons

Medicine Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer Bendheim, Carl Bendheim, Henry W. Hoyt, adm'r estate of John W. Andrews, deceased, citizens and residents of the State of Missouri; A. S. Aloe Company, a citizen and resident of the State of Illinois; The National Lead Company, a citizen and resident of the State of New Jersey; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, William H. Sternberg, David Sternberg, Solomon Harpman, Memphis Paper Company, and Van Vleet-Mansfield Drug Company, citizens and residents of the State of Tennessee; Meriden Silver Plate Company, a citizen and resident of the State of Connecticut; Claus Shear Company, a citizen and resident of the State of Ohio; and The Coco Cola Company, a citizen and resident of the State of Georgia, defendants, and that said suit is for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing the claims filed by the parties whose names have just been mentioned against the estate of Hiram Evans, deceased, who died in said county on April 13, 1891; that said defendants, George M. Traylor and others, all of whose names and residences have just been stated and particularly set out, are not residents of this State, nor inhabitants of said eastern district of Arkansas, nor found therein, nor have they voluntarily appeared in said action.

Wherefore, plaintiffs pray that this honorable court may make an order directing that said defendants, George M. Traylor, John
12 F. Stratton, John F. Smith, Alfred Wright, Solon Palmer, Crunden-Martin Woodenware Co., Meyer Brothers Drug Co., Liquid Carbonic Acid Manufacturing Co., C. F. Simmons Medicine Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer Bendheim, Carl Bendheim, Henry W. Hoyt, adm'r estate of John W. Andrews, deceased, A. S. Aloe Co., The National Lead Co., Wm. N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Meriden Silver Plate Co., Claus Shear Co., and The Coco Cola Company appear, plead, answer or demur in said suit by a day to be named by said court, and that a copy of said order be directed to be served upon them by the United States marshal of the proper district of the United States.

SALLIE J. McDANIEL,
NANNIE A. [illegible]OSHALL, &
MARY E. J[illegible]KSON,
By J. R. BEASLEY, *Attorney.*

STATE OF ARKANSAS, *Phillips County:*

J. R. Beasley, one of the attorneys for said plaintiffs, being duly sworn, states on oath that the facts alleged in the foregoing petition are true.

J. R. BEASLEY.

Subscribed and sworn to before me this the 16th day of October, 1902.

EMERSON R. CRUM, *Clerk.*

Endorsed: No. 105. Sallie J. McDaniel, *et al. v.* George M. Traylor, *et al.* Petition for order of service. Filed October 16, 1902. Emerson R. Crum, clerk.

13 *Order for Service.*

October 16th, 1902.

#105.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Complainants,

vs.

GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, SOLON Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid C-rbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the
14 bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D., 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had,

October 16th, 1902, to-wit:

#105.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Complainants,
vs.
GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, SOLON Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and the county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid C-rbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H.

Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C.
15 Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.* are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:
[SEAL.] EMERSON R. CRUM, *Clerk.*

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

I certify that on the 29th day of October, A. D. 1902, at the city of St. Louis, in the eastern judicial district of Missouri, I delivered a true copy of the foregoing order of court in this cause as
16 certified by the clerk to Theodore F. Meyer, vice president of the within named defendant corporation Meyer Brothers

Drug Company, and who was in the business office of said corporation and had charge thereof at the time of said service, the president or other higher chief officer of said corporation could not be found in the said district.

WILLIAM L. MORSEY,
United States Marshal, Eastern District of Missouri,
By E. J. WATSON, *Deputy.*

Fee $2.12.

Endorsed: No. 105. Sallie J. McDaniel, *et al. v.* George M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Equity. Certified copy of order for service. Issued, October 27, 1902. Returnable, on or before December 1st, 1902. Returned and filed October 31st, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D. 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had,

October 16th, 1902, to-wit:

#105.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Complainants,

vs.

GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, SOLON Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of
17 St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Com-

any, Meyer Brothers Drug Company, Liquid C-rbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, the Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:
[SEAL.] EMERSON R. CRUM, *Clerk.*

18 I have executed the within order by leaving a true and correct copy of said order with William M. Wilkerson and Thomas H. Chilton. The other defendants George M. Traylor, John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Wooden Ware Company, Myer Brothers Drug Company, Liquid Carbonic Acid M. F. G. Co., Dr. J. H. McLean Medicine Company, August Hershel, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company,

ational Lead Company, Henry W. Hoyt, adm'r, J. C. Mendenhall, hn Doe, Richard Kupperschmidt, Abram Goodman, Solomon ernberg, David Sternberg, William H. Sternberg, Solomon Harpan, Claus Shear Company, Coco Cola Company, Alfred Wright, eriden Silver Plate Company, and C. F. Simmons Medicine Comny are not to be found in my district. The defendants, Memphis aper Company, and Van Vleet-Mansfield Drug Company reside in y district, but no copies of this order forwarded for them and no rvice made as to them. This November 8, 1902.

FRANK S. ELGIN,
U. S. Marshal,
By A. C. LEA, *Office Deputy.*

Endorsed: No. 105. Sallie J. McDaniel, *et al. v.* George M. Tray-r, *et al.* In U. S. circuit court at Helena, Arkansas. Equity. ertified copy of order for service. Issued October 27, 1902. Re-rnable, on or before December 1st, 1902. Returned and filed Nov. , 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Web-r, solicitors for complainants. Marshal's fees, $4.10.

NITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States, in id for the eastern division of the eastern district of Arkansas, begun id holden on Monday, the 13th day of October, A. D. 1902, at the nited States court rooms, in the city of Helena, the Honorable acob Trieber, district judge presiding and holding said court, the llowing proceedings were had,
October 16th, 1902, to-wit:

) #105.

ALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON,
Complainants,
vs.
EORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, SOLON Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants.

Now on this day come the complainants and show to the court hat they are all citizens of the State of Arkansas, and county of St.

Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid C-rbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the
20 United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

This writ came to hand Nov. 20, 1902, and was executed same date on Solomon Harpman by making known to him contents of this order, and leaving copy of said order with him, as directed.

FRANK S. ELGIN,
U. S. Marshal,
A. C. LEA, *Deputy.*

Marshal's cost in case $2.00.

Endorsed: No. 105. Sallie J. McDaniel *et al. v.* Geo. M. Traylor *et al.* In U. S. circuit court at Helena, Arkansas. Certified copy of order for service. Issued, Oct. 27th, 1902. Returnable, on or before December 1st, 1902. Returned and filed Nov. 24th, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D. 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had,

October 16th, 1902, to-wit:

21 #105.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Complainants,

vs.

GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, SOLON Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid C-rbonic Acid Manufactur-

ing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, Willaim H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this siut, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be
22 made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas, ss:

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

Marshal's Return.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I certify that on the 20th day of November, A. D. 1902, at the city of St. Louis, in the eastern judicial district of Missouri, I de-

livered a true copy of the foregoing order of court as certified by the clerk to Norman E. Tevis, secretary of the within named defendant corporation The C. F. Simmons Medicine Company, and who was in the business office of said corporation and had charge thereof at the time of said service. The president or other higher chief officer of said corporation could not be found in the eastern district of Missouri.

WILLIAM L. MORSEY,
United States Marshal, Eastern District of Missouri,
By E. J. WATSON, *Deputy.*

Fee $2.12.

Endorsed: No. 105. Sallie J. McDaniel, *et al. v.* Geo. M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Certified copy of order for service. Issued, Oct. 27th, 1902. Returnable, on or before December 1st, 1902. Returned and filed Nov. 24, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

23 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States, in and for the eastern divison of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D. 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had,

October 16th, 1902, to-wit:

#105.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Complainants,
vs.
GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, SOLON Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments

of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents
24 of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

I hereby certify, that on the 22nd day of November, 1902, at the city of New York, in my district, I personally served the within certified copy order for service upon the within named defendant John F. Stratton at 62 Grand St., N. Y. city, by exhibiting to him

the within certified copy and at the same time leaving with him a copy certified thereof.

WM. HENKEL,
United States Marshal, Southern District of New York.

Dated Nov. 22, 1902.
J. B. B.

Endorsed: No. 105. Sallie J. McDaniel, *et al. v.* Geo. M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Certified copy of order for service. Issued, Oct. 27th, 1902. Returnable, on or before December 1st, 1902. Returned and filed November 25, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

25 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D. 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had:

October 16th, 1902, to-wit:

105.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Complainants,
vs.
GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, SOLON Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator

of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans,
who died in said county on April 13th, 1891; that all of
26 said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:
[SEAL.] EMERSON R. CRUM, *Clerk.*

UNITED STATES OF AMERICA,
District of Connecticut, ss:

MERIDEN, *Nov.* 28, 1902.

Then and by virtue hereof I made diligent search for the within named Meriden Silver Plate Co. but could not find that they had a corporate existence in this district.

Attest: EDSON S. BISHOP,
U. S. Marshal.
By PHILIP E. BOWEN,
His Deputy.

27 *Expense.*

R. R. fare	.80
Dinner	1.00
	1.80
R. R. fare	.80
	2.60

Endorsed: No. 105. Sallie J. McDaniel *et al. v.* George M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Equity. Certified copy of order for service. Issued, October 27, 1902. Returnable, on or before December 1st, 1902. Returned and filed Dec. 1, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden, on Monday, the 13th day of October, A. D. 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had,

October 16th, 1902, to-wit:

105.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Complainants,

vs.

GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, SOLON Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judg-
28 ments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Wooden-

ware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, Willaim H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaDniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

29 Department of Justice. Office of United States Marshal, Western District of New York.

ELMIRA, N. Y., *Nov.* 26, 1902.

Emerson R. Crum, Esq., clerk United States courts, Helena, Arkansas:

DEAR SIR: I herewith return writ in the case of McDaniel *et al. vs.* Traylor *et al.*, unserved.

I am informed by my deputy at Rochester, New York, that Alfred Wright, of 333 West avenue, died in 1891. He was engaged in the perfumery business and in 1893 the business was reorganized under the firm name of "Alfred Wright Perfumer." This firm is composed of Alfred G. Wright and John S. Wright. Alfred G. Wright is now out of town and his exact location is unknown. He will be away several weeks.

If you desire service to be made upon Alfred G. Wright, kindly change return date and return papers to me and I will endeavor to serve same immediately upon their receipt.

Yours very truly, WM. R. COMPTON,
U. S. Marshal, W. D. N. Y.

Endorsed: No. 105. Sallie J. McDaniel, *et al., v.* Geo. M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Equity. Certified copy of order for service. Issued, Oct. 27th, 1902. Returnable, on or before December 1st, 1902. Returned and filed December 1st, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

Record Entry on Filing Demurrer.

Before the Clerk, January 5th, 1903.

105.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

On this day came the defendants, W. N. Wilkerson & Co., Meyer Bros. Drug Co., S. Harpman, John F. Stratton and The C. F. Simmons Medicine Co., by their solicitors, Messrs. W. N. Norton and R. W. Nicholls, and file their demurrer to the complaint of the complainants herein.

30 *Demurrer to Complaint.*

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Arkansas.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Complainants,

vs.

GEORGE M. TRAYLOR ET AL., Defendants.

Demurrer of the defendants W. N. Wilkerson & Co., Meyer Bros. Drug Co., S. Hartman and such other defendants as have been served with process, to-wit, John F. Stratton, C. F. Simmons Medicine Co.

These defendants, by protestation, not confessing any or all of the matters and things in the plaintiff's bill of complaint contained to be true, in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that,

First. That there is no equity in complainant's bill.

Second. That complainants' bill does not state facts sufficient to constitute a cause of action, nor to entitle complainants to any relief.

Third. That according to the allegations of said bill the same facts and the same supposed cause of action have been in litigation in the courts of the State of Arkansas and twice appealed to the supreme court and there adjudged. Wherefore, all the matters and things in complainants' said bill alleged are *res adjudicata.*

4th. That this court has no jurisdiction of the parties and subject matter of this action.

5th. And that this court has no jurisdiction of this suit, for want of proper parties defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendants do*th* demur thereto, and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill; and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

N. W. NORTON AND
R. W. NICHOLLS,
Counsel for D'f'ts.

I am of counsel for the defendants who interpose the foregoing demurrer and I hereby certify that in my judgment the said demurrer is well taken.

R. W. NICHOLLS.

31 STATE OF TENNESSEE, *County of Shelby:*

I, W. N. Wilkerson, on my oath say that I am one of the defendants in the above entitled cause and that the foregoing demurrer is not interposed for delay.

W. N. WILKERSON.

Subscribed and sworn to before me this 27th day of December, 1902.

[SEAL.] W. R. CROSS,
Notary Public.

My com. expires July 1904.

Endorsed: No. 105. Sallie J. McDaniel, *et al. vs.* Geo. M. Traylor, *et al.* Dem. to comp. Filed Jan. 5, 1903. Emerson R. Crum, clerk. Copy of within demurrer forwarded J. R. Beasley, attorney, at Forrest City, Arkansas, this January 6th, 1903. Emerson R. Crum, clerk.

Second day of the March Term, 1903, Tuesday, March 10th, 1903.

Presiding and holding said court, Honorable Jacob Trieber, U. S. district —, and other officers as noted on the 9th day of March last past.

In the Circuit Court of the United States, Eastern Division, Eastern District of Arkansas.

105. Equity.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

Now on this day come the complainants in open court and present their application for substituted service upon the following named defendants, to-wit: George M. Traylor, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Liquid Carbonic Acid Manufacturing Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of John W. Andrews, deceased, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Memphis Paper Company, Van Vleet Mansfield Drug Company, Alfred Wright, Claus Shear Company, The Coco Cola Company, and Meriden Silver Plate Company,

And it appearing to the court that this action is brought for the purpose of enjoining the collection of certain judgments ob-
32 tained by defendants against the estate of Hiram Evans, deceased, and removing the cloud cast by the same upon the title to property owned by complainants, as heirs at law of Hiram Evans, dec'd, within the eastern division of the eastern judicial district of Arkansas, and that the aforesaid defendants are absent from said district, and are not residents or inhabitants of said district and cannot be found therein, but are, each and all of them, non-residents of the State of Arkansas, but whose residence complainants have, after due diligence, been unable to ascertain, and

that process issued to be served in the districts where they formerly resided, has been returned by the marshal of said districts as not found, and it being shown that they have not entered their appearance herein voluntarily, and that it is not practicable to serve them personally,

It is ordered by the court that they, the defendants hereinabove named, appear and plead, answer or demur to the bill of complaint of the complainants herein on or before the first Monday in June, 1903, or suffer a decree *pro confesso* against them in the event of their failure so to do.

And it is further ordered, that a certified copy of this order be published at least once a week for six consecutive weeks in the Helena Weekly World, a newspaper printed and published within the said district.

JACOB TRIEBER, *Judge.*

Warning Order.

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 9th day of March, A. D. 1903, at the United States court room in the city of Helena, Arkansas, the Honorable Jacob Trieber, United States district judge, presiding and holding said court, the following proceedings were had, to-wit:

March 10th, 1903.

In the Circuit Court of the United States, Eastern Division, Eastern District of Arkansas.

No. 105. Equity.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

Now on this day come the complainants in open court and present their application for substituted service upon the following named defendants, to-wit: George M. Traylor, John F. Smith,
33 Solon Palmer, Crunden-Martin Woodenware Company, Liquid Carbonic Acid Manufacturing Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of John W. Andrews, deceased, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Memphis Paper Company, Van Vleet Mansfield Drug Company, Alfred Wright, Claus Shear Company, The Coco Cola Company, and Meriden Silver Plate Company.

And it appearing to the court that this action is brought for the purpose of enjoining the collection of certain judgments obtained by the defendants against the estate of Hiram Evans, deceased, and removing the cloud cast by the same upon the title to property owned by complainants, as heirs at law of Hiram Evans, dec'd, within the eastern division of the eastern judicial district of Arkansas, and that the aforesaid defendants are absent from said district, and are not residents or inhabitants of said district and cannot be found therein, but are, each and all of them, non-residents of the State of Arkansas, but whose residence complainants have, after due diligence, been unable to ascertain, and that process issued to be served in the districts where they formerly resided, has been returned by the marshal of said districts as not found, and it being shown that they have not entered their appearance herein voluntarily, and that it is not practicable to serve them personally,

It is ordered by the court that they, the defendants hereinabove named, appear and plead, answer or demur to the bill of complaint of the complainants herein on or before the first Monday in June, 1903, or suffer a decree *pro confesso* against them in the event of their failure so to do.

And it is further ordered, that a certified copy of this order be published at least once a week for six consecutive weeks in the Helena Weekly World, a newspaper printed and published within the said district.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing writing annexed to this certificate is a true and compared copy of the order of court in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the original remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of Helena, this the
34 16th day of March, A. D. 1903, and of the Independence of the United States the 127th.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

Certificate of Publication.

STATE OF ARKANSAS, *County of Phillips:*

I, T. J. Mitchell, do swear that I am chief accountant of the Helena Daily and Weekly World, a newspaper printed and having a *bona fide* circulation in said county, and which has been regularly published in said county for the period of one month next before

the date of the first publication of the annexed advertisement, and do swear that said advertisement was published in the Weekly World for six consecutive times next before the 23rd of April, 1903, by six insertions in said paper, viz: in the issues of March 18th, 25th, April 1st, 8th, 15th & 22nd.

T. J. MITCHELL.

Sworn and subscribed to before me this 22 day of April, 1903.
[SEAL.] C. C. AGEE, *N. P.*

My commission expires on the 13 day of Sept. 1903.

Endorsed: No. 105. Sallie J. McDaniel, *et al. vs.* Geo. M. Traylor, *et al.* Proof of publication. Filed April 23, 1903. Emerson R. Crum, clerk.

Nineteenth Day of the March Term, 1903, Monday, July 13th, 1903.

Presiding, Honorable Jacob Trieber, U. S. district judge.

Decree.

105.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

The court being sufficiently advised as to what judgment to render on the demurrer to the jurisdiction of the court, heretofore submitted, and by the court taken under advisement, doth sustain the same.

It is therefore ordered, adjudged and decreed by the court that complainants' bill be dismissed for want of jurisdiction.

JACOB TRIEBER, *Judge.*

35 *Opinion of the Court.*

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

On Demurrer to Jurisdiction.

G. B. Webster, and J. R. Beasley, for complainants.
N. W. Norton and R. W. Nicholls, for defendants.

TRIEBER, *District Judge:*

This action was instituted by complainants, children and heirs a law of Hiram Evans, who died intestate seized of considerable pe

sonal property and valuable real estate lying and situate in this district. The object of the bill is to set aside as fraudulent a number of judgments rendered by the probate court of St. Francis county, Arkansas, in favor of the defendants against the estate of their deceased father which are liens on the real estate, which, by the laws of descent of the State of Arkansas, has been inherited by complainants.

The value of the real estate, affected by the liens of these judgments, exceeds two thousand dollars, it is alleged in the bill, and so does the aggregate amount of the judgments of all the defendants, but no one of the judgments in favor of any one of the defendants exceeds that sum.

The diversity of citizenship necessary to give a national court jurisdiction is shown by the bill, and the only question to be determined is whether the amount necessary to confer jurisdiction on this court, is the aggregate amount of the judgments in favor of all the defendants, or whether each defendant's judgment must exceed the sum of two thousand dollars, exclusive of interest.

Although numerous defendants have been joined in the suit, the proceeding is, in fact, against each defendant separately. There is no allegation in the bill which makes the defendants liable jointly. Each of the judgments in favor of the numerous defendants stands separately and requires separate proof as to its invalidity. If a decree is rendered in favor of the complainants against all defendants, it must be entered against each one separately, as in cases of separate suits.

Such being the case, the value of the matter in dispute with each defendant must be the sum of his own judgment, and these separate and distinct interests cannot be joined for the purpose of making up the proper amount necessary to give this court jurisdiction.

36 Cases direct in point as to the jurisdiction of the circuit court are Walter *vs.* Railroad Company, 147 U. S. 370; Railroad Company *vs.* Walter, 148 U. S. 392; Fishback *vs.* Western Union Telegraph Co. 161 U. S. 96; Citizens Bank *vs.* Cannon, 164 U. S. 319.

In Walter *vs.* Railroad Company, the court says:

"Is the plaintiff entitled to join them all in a single suit in a Federal court and sustain the jurisdiction by reason of the fact that the total amount involved exceeds two thousand dollars? We think not. It is well settled in this court that when two or more plaintiffs, having separate interests, unite for the convenience of litigation in a single suit, it can only be sustained in the court of original jurisdiction, or on appeal in this court, as to those whose claims exceed the jurisdictional amount, and that when two or more defendants are sued by the same plaintiffs in one suit, the test of jurisdiction is the joint or several character of the liability of the plaintiff." 147 U. S. 373.

The cases in which the Supreme Court has dismissed appeals in which the jurisdiction of that court depended on the amount involved are based upon the same principle. They are too numerous

to cite, but a large number of them are collected in the opinion of the court in Gibson *vs.* Shufeldt, 122 U. S. 27.

As stated by Mr. Justice Bradley, in Clay *vs.* Field, 138 U. S. 464-479:

"The general principle observed in all cases is that if several persons be joined in a suit in equity or admiralty and have a common and undivided interest, though separable as between themselves, the amount of their joint claim of liability will be the test of jurisdiction, but when their interests are distinct and they are joined for the sake of convenience only, and because they form a class of parties whose rights or liabilities arose out of the same transaction, or have relation to a common fund or mass of property sought to be administered, such distinct demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdiction by appeal but each must stand or fall by itself alone."

Nor can the jurisdiction of the court be sustained upon the ground that the value of the real estate, on which these judgments are liens and consequently clouds on complainants' title, exceeds the sum of two thousand dollars, for the value in dispute is not the value of the property on which the judgment is a lien, but the amount of each judgment, or the amount each defendant will have to be paid to release his lien, if his judgment is not set aside. Linehan *vs.* Pendergrass, 15 C. C. A. 585, 70 Fed. 1; Werner *vs.* Murphy, 60 Fed. (C. C.) 769; Busey *vs.* Smith 67 Fed. (C. C.) 13.

"By matter is dispute," says the Supreme Court, "is meant the subject of litigation; the matter for which the suit is brought, and upon which the issue is joined, and in relation to which jurors are called, and witnesses examined." Lee *vs.* Watson 1 Wall. 337.

What is the matter for which the suit is brought? Not the
37 title to the land, but to cancel judgments, which incidentally are liens on the land.

The rule would be different if the cloud on the title consisted of a claim on the part of the defendants which would affect the absolute title of the property and which could not be discharged by the payment of money. In such a case, the title to the land being involved, its value determines the jurisdiction of the court. This distinction is fully recognized in the principal case relied upon by counsel for complainants. Woodside *vs.* Cieroni, 35 C. C. A. 177, 93 Fed. 1.

The demurrer to the jurisdiction must be sustained and the bill dismissed.

Endorsed: #105. Sallie J. McDaniel, *et al. vs.* Geo. M. Traylor *et al.* Opinion. Filed June 21, 1903. Emerson R. Crum, clerk

Record Entry on Petition for Appeal and Order Granting Same.

September 23rd, 1903.

105.

SALLIE J. McDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

On this day come the complainants, by their solicitors, Messrs. G. B. Webster and J. R. Beasley, and file their petition for appeal, assignment of errors, and bond on appeal, in this cause, which said petition for appeal is endorsed as follows: "Appeal allowed, returnable in thirty days upon execution of a cost bond for $250.00, which is presented and approved.

JACOB TRIEBER,
U. S. Dist. Judge, Eastern District of Ark.

Petition for Appeal.

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

No. 105. Equity.

SALLIE J. McDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

The complainants in the above entitled cause, believing themselves aggrieved by the decree dismissing their bill for want of jurisdiction, heretofore rendered and entered of record therein, do hereby appeal from the said order and decree to the Supreme Court of the United States, for the reasons set out in the assignment of
38 errors hereto attached, and pray that their appeal may be allowed, and that a transcript of the record and proceedings upon which said decree was entered, duly authenticated, may be sent to the said Supreme Court.

G. B. WEBSTER,
J. R. BEASLEY,
Solicitors for Complainants.

Appeal allowed, returnable in thirty days upon execution of a cost bond for $250.00, which is presented and approved.

JACOB TRIEBER,
U. S. Dist. Judge, Eastern District of Ark.

Endorsed: No. 105. Sallie J. McDaniel, *et al.*, complainants, *vs.* George M. Traylor, *et al.*, defendants. In U. S. circuit court at Helena, Arkansas. Petition for appeal. Filed Sept. 23, 1903. Emerson R. Crum, clerk.

Assignment of Errors.

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

Now come the complainants in the above entitled cause by their solicitors and say that the decree heretofore rendered therein is erroneous and against their just rights for the following reasons, to-wit:

1. Because the said circuit court erred in denying its own jurisdiction therein.

2. Because it was error on the part of the circuit court to sustain the demurrer of the defendants therein for want of jurisdiction and error to dismiss the complainants' bill upon the said demurrer for that reason.

Wherefore for these reasons and causes apparent upon the face of the record therein, the said complainants pray that the said errors may be corrected, and the decree rendered and entered as aforesaid by the said circuit court of the United States for the eastern division of the eastern judicial district of Arkansas may be set aside and for naught held and esteemed, and that the said circuit court may be directed by the honorable the Supreme Court of the United States to take jurisdiction of the said cause and to proceed further therein as equity and justice may require.

G. B. WEBSTER,
J. R. BEASLEY,
Solicitors for Complainants.

39 Endorsed: No. 105. Equity. In the circuit court of the United States for the eastern division of the eastern district of Arkansas. Sallie J. McDaniel, *et al.*, plaintiffs *vs.* George M. Traylor, *et al.*, defendants. Assignment of errors. Filed Sept. 23, 1903. Emerson R. Crum, clerk.

Bond on Appeal.

Know all men by these presents, that we, Sallie J. McDaniel, Mary E. Jackson and Nannie A. Hoshall, principals, and Daniel Wylds and S. T. McDaniel, sureties, are held and firmly bound unto George M. Traylor, John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of estate John W. Andrews,

deceased, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, Van Vleet-Mansfield Drug Company, Claus Shear Company, Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, in the full and just sum of ($250.00) two hundred and fifty dollars, to be paid to them, their heirs, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this the 5th day of September in the year of our Lord one thousand nine hundred and three.

Whereas lately, at the March term, A. D. 1903, of the circuit court of the United States for the eastern division of the eastern district of Arkansas, in a suit pending in said court between Sallie J. McDaniel, Mary E. Jackson and Nannie A. Hoshall, plaintiffs, and George M. Taylor, John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, deceased, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, Van Vleet-Mansfield Drug Company, Claus Shear Company, Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, defendants, judgment was rendered against the said plaintiffs, Sallie J. McDaniel, Mary E. Jackson and Nannie A. Hoshall, and the said plaintiffs have taken an appeal to the United States Supreme Court to
40 reverse the judgment in the aforesaid suit and obtained a citation directed to the said defendants, George M. Traylor *et al.*, citing and admonishing them to be and appear in the United States Supreme Court at the city of Washington, in the District of Columbia, thirty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Sallie J. McDaniel, Mary E. Jackson, and Nannie A. Hoshall shall prosecute said appeal to effect, and answer all costs if they fail to make good their appeal, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

SALLIE J. McDANIEL. [SEAL.]
MARY E. JACKSON. [SEAL.]
NANNIE A. HOSHALL. [SEAL.]
DANIEL WYLDS. [SEAL.]
S. T. McDANIEL. [SEAL.]

Approved
JACOB TRIEBER,
U. S. Dist. Judge, East. Dist. of Ark.

Endorsed: No. 105. Sallie J. McDaniel, *et al., vs.* George M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Bond on appeal. Filed Sept. 23, 1903. Emerson R. Crum, clerk.

Certificate as to Appeal Bond.

STATE OF ARKANSAS, *St. Francis County:*

I, George B. Mallory, clerk of the circuit and chancery courts of St. Francis county, Arkansas, do hereby certify that I am personally acquainted with Dan Wylds and S. T. McDaniel, whose names appear as sureties on appellants' appeal bond in the case of Sallie J. McDaniel, *et al. v.* George M. Traylor, *et al.* recently decided by the United States circuit court at Helena, Ark.; that said Wylds and S. T. McDaniel are substantial farmers in St. Francis county, and are owners of property much in excess of their exemptions under the law; that there is no mortgage or mortgages on the property of either of them on record in the recorder's office of said county; and that in my judgment their names as sureties on said appeal bond for $250.00 makes the bond perfectly good for that amount.

Witness my hand, this Sept. 7, 1903.

G. B. MALLORY, *Clerk.*

Endorsed: No. 105. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Certificate as to cost bond. Filed Sept. 23, 1903. Emerson R. Crum, clerk.

41 THE UNITED STATES OF AMERICA:

To George M. Traylor, John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, Van Vleet-Mansfield Drug Company, Claus Shear Company, Coco Cola Company, Alfred Wright, Meridan Siver Plate Company, and C. F. Simmons Medicine Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court thirty days from and after the day this citation bears date, pursuant to an order allowing an appeal, filed in the clerk's office of the circuit court of the United States for the eastern division of the eastern judicial district of Arkansas, wherein Sallie J. McDaniel, Nannie A. Hoshall and Mary E. Jackson are appellants, and you are appellees, to show cause, if any there

be, why the judgment rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Jacob Trieber judge of the district court of the United States for the eastern district of Arkansas, sitting as circuit judge, this 19th day of September in the year of our Lord one thousand nine hundred and three.

JACOB TRIEBER,
United States District Judge for the Eastern District of Arkansas, Sitting as Circuit Judge.

Service of this citation is hereby waived for such of the defendants as were served with process.
Octo. 2nd 1903.

N. W. NORTON,
Of Counsel for Def'ts & Appellees.
MEYER BROS. DRUG CO.,
Per R. W. NICHOLLS, *Its Counsel.*

[Endorsed:] No. 105. United States circuit court, eastern division of the eastern judicial district of Arkansas. Sallie J. McDaniel *et al. vs.* George M. Traylor *et al.* Citation. Filed October 12th 1903. Emerson R. Crum, clerk.

42 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the foregoing pages hereto attached, numbered from one to fifty-eight inclusive, including this certificate, is a true and compared copy of the record and proceedings in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record and on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 12th day of October, A. D. 1903.

[Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Arkansas.]

EMERSON R. CRUM, *Clerk.*

Endorsed on cover: File No. 19,095. E. Arkansas C. C. U. S. Term No. 129. Sallie J. McDaniel, Nannie A. Hoshall, and Mary E. Jackson, appellants, *vs.* George M. Traylor, John F. Stratton, John F. Smith, *et al.* Filed October 22d, 1903. File No. 19,095.

1 In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

No. 105.

MRS. SALLIE J. MCDANIEL ET AL., **Complainants,**
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

Agreement of Parties as to Transcript on Second Appeal to the United States Supreme Court.

This cause having already been to the United States Supreme Court on demurrer to the jurisdiction of the United States Circuit Court for the Eastern Division of the Eastern District of Arkansas, and the decree of the latter sustaining said demurrer having been reversed by the former on appeal and the cause remanded, and the lower Court having dismissed the bill a second time for want of jurisdiction, from which decree rendered on October 9th, 1906, an appeal has been prayed and granted, it is agreed by the parties to this suit that the Transcript of the record to be sent up on the second appeal shall begin where the former transcript ended; that is, with the Mandate of the United States Supreme Court; in accordance with the Rules of the Supreme Court of Arkansas in relation to second appeals; and that the Transcript of the Record now in the United States Supreme Court on the first appeal shall be considered and treated as a part of the Transcript of the Record in this cause so far as it goes, just as if it had been copied and certified a second time by the Clerk of said United States Circuit Court, who is hereby requested and directed to file this agreement and send a copy thereof with the Transcript on the second appeal to the Clerk of the United States Supreme Court.

J. R. BEASLEY,
Solicitor for Complainants.
N. W. NORTON,
Solicitor for Defendants.

April 3rd, 1907.

Endorsed: No. 105. Sallie J. McDaniel, *et al.*, Complainants, *vs.* George M. Traylor, *et al.*, Defendants. Agreement. Filed April 5, 1907. Emerson R. Crum, Clerk.

2 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

Be it remembered, That at a regular term of the Circuit Court of the United States, in and for the Eastern Division of the Eastern District of Arkansas, begun and holden in the United States Court Room, in the City of Helena, on the 12th day of March, A. D. 1906; there was present, presiding and holding said court, Honorable Jacob Trieber, U. S. District Judge, whereupon, among others, the

following proceedings were had on the 12th day of March, A. D. 1906, a day of said term, to-wit:

105.

SALLIE J. McDANIEL ET AL., Complainants,
vs.
GEO. M. TRAYLOR ET AL., Defendants.

It is ordered by the court that the mandate in this cause from the United States Supreme Court, be entered of record, which mandate is in words and figures following, towit:

UNITED STATES OF AMERICA, *ss:*

[SEAL.]

The President of the United States of America, to the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Arkansas, Greeting:

Whereas, lately in the Circuit Court of the United States for the Eastern District of Arkansas before you or some of you, in a cause between Sallie J. McDaniel, Mary E. Jackson, and Nannie A. Hoshall, complainants, and George M. Traylor, John F. Stratton, John F. Smith, *et al.*, defendants, No. 105, wherein the decree of the said Circuit Court, entered in said cause on the 13th day of July, A. D. 1903, is in the following words, viz:

3 "The Court being sufficiently advised as to what judgment to render on the demurrer to the jurisdiction of the Court, heretofore submitted, and by the Court taken under advisement, doth sustain the same.

It is therefore ordered, adjudged and decreed by the Court that complainants' bill be dismissed for want of jurisdiction.

JACOB TRIEBER, *Judge.*"

as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the Act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and four, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed with costs; and that the said complainants, Sallie J. McDaniel, *et al.*, recover against the said defendants one hundred and twenty-one dollars and seventy-five cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded, to the said Circuit Court with directions to set

aside the order dismissing the suit for want of jurisdiction, to overrule the demurrer, and for such further proceedings as may be consistent with the opinion of this court and with law. February 20, 1905.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 23d day of March, in the year of our Lord one thousand nine hundred and five.

Cost of Complainants.

Clerk	$52.75
Printing Record	49.00
Attorney	20.00
	$121.75

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Second Day of March Term, Tuesday, March 13, 1906.

105.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEO. M. TRAYLOR ET AL., Defendants.

Order on Mandate.

Comes the plaintiffs by R. J. Beasley, their solicitor, and the defendants, by N. W. Norton, and R. J. Williams, their solicitors and the mandate of the Supreme Court having heretofore been entered.

It is therefore by the court ordered that the order dismissing this cause for want of jurisdiction, be and the same is hereby set aside, and the demurrer to the Bill is overruled, with leave to the defendants to answer by Rule Day in April, and the decree *pro confesso* entered heretofore on motion of plaintiffs is set aside, and it is further adjudged that the complainants do have and recover of the defendants, the sum of $121.75 costs of the appeal adjudged by the Supreme Court and said sum having been paid by defendants, the said decree as to said costs is satisfied.

JACOB TRIEBER, *Judge.*

5 Rule Day, April 2d, 1906.

105.

SALLIE J. McDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLER ET AL., Defendants.

On this day come the defendants herein who have been served with process, by their solicitors, Messrs. R. J. Williams and N. W. Norton, and file their answer herein.

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

SALLIE J. McDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLER ET AL., Defendants.

Answer.

Comes the defendant, W. N. Wilkerson, and such other defendants as have been served with process herein, and for answer to the complainant' bill.

1. They admit the citizenship of the parties as alleged by the complainant.

2. They admit that Hiram Evans died as alleged on April 13th, 1891, and that at the time of his death, he was the owner of certain lands in St. Francis County, Arkansas, as alleged and approximately of the value alleged.

3. They admit that the heirs of Hiram Evans were and are as alleged.

4. They admit that one of the sons, James Evans, administered upon the estate of Hiram Evans, and that he acted as such
6 administrator until his death, but they deny that he wholly failed to make any settlements, as such administrator.

5. They admit that among the assets of the estate of Hiram Evans, a certain drug store came to the hand of the administrator, with fixtures, etc., thereto belonging, but they deny that said drug store was sold by said administrator to John Evans, and in this connection the defendants state the facts to be, that the said John Evans had for many years in the life-time of Hiram Evans, conducted said drug store business, and had charge thereof, and after the death of Hiram Evans sought to acquire it for himself, and with this end in view he was, by the administrator and with the consent of the heirs, including complainants herein, allowed to continue in possession of said drug store with the understanding that it should become his property if he paid and satisfied the debts it owed at time of the death of Hiram Evans, and on no other condition.

That with the knowledge of said administrator, and the heirs of Hiram Evans, including plaintiffs, the said John Evans conducted said business in his own name, and thereby made the said drug store a basis of credit, and contracted thereon the debts of which the complainants complain.

These defendants admit that on and about the time alleged by complainants the said John Evans delivered said drug store back to possession of James Evans, as administrator of the estate of Hiram Evans, and all that belonged therewith, and this was done because of the inability of the said John Evans to pay the debts of the drug store and acquire the property therein.

These defendants admit that John Evans was then wholly insolvent.

These defendants deny, that thereupon, or at any other time, they colluded and confederated with the said John Evans,
7 and James Evans, as administrator, to secure the payment of their demands against John Evans, out of the assets of Hiram Evans, deceased, and they deny that so conspiring and confederating, they procured the said James Evans to illegally and fraudulently allow said claims against the estate of Hiram Evans; and they deny that said claims were fraudulently or collusively presented to the Probate Court of St. Francis County, Arkansas. And in this connection the defendants state the facts to be that when said administrator received the said drug store back from the said John Evans, upon the ground that the title never passed to him, their claims, for goods sold the said John Evans and with which the stock of said drug store was kept replenished, at once became equitable demands, against said estate, which the heirs, including complainants, were and are estopped to deny, by reason of the fact that the possession and handling of said drug store by the said John Evans was with their knowledge and consent.

These defendants deny that in presenting said claims to the Probate Court; there was any concealment of the fact that the goods had been sold to John Evans but on the contrary the sales to John Evans and the circumstances thereof, and the retaking of the drug store by the administrator were relied upon as creating just liabilities against the estate, and were so presented to the said Probate Court, and received the approval of the said Court, and the claims were allowed, not through any character of collusion or concealment, but upon the open contention that as the drug store had all the time been the property of the estate, (as then developed) the estate should pay for its replenishing.

These defendants deny that the Probate Court of St. Francis County was without jurisdiction to entertain these equitable
8 claims, and deny that the allowance thereof was the result of any fraud, conspiracy or confederation.

These defendants deny that there was any concealment from plaintiffs of the conditional sale of the drug store to John Evans or his possession and control thereof; but on the contrary it was with the full knowledge of complainants, even to the details.

These defendants admit that the complainants filed a bill in the St. Francis Chancery Court setting up the matters and things alleged

in the bill now being answered, and that after a hearing said bill was dismissed for want of equity, and they further admit that said judgment of the St. Francis Chancery Court was by the Supreme Court of Arkansas, affirmed.

The defendants deny that said judgment of affirmance was without prejudice, except in the sense that it left open to complainants any remedy they might have, not litigated and concluded in that action, but the allegations of fraud and collusion here relied on were in that action relied on and met, and by the judgment of said Chancery and Supreme Courts it was established that no fraud or collusion had been committed, and defendants here plead said adjudications in bar.

These defendants admit that it is true that the complainants again set up the same matter and things by way of cross bill and defense to a petition (in the Probate Court) for the setting of a day for the sale of the real estate, that an order of said court previously made might be carried out, and that the said petition and cross bill were pending in the Circuit and Supreme Courts until Jan. 11th, 1902, and that it was then held that neither the Probate or Circuit Court could hear or determine equitable issues (of that character).

It is also true that in said cause the Supreme Court said
9 that complainants' remedy was by original bill in equity, but in saying this the said Supreme Court was unmindful of the fact that by its own records, the remedy in equity had been already invoked, and without effect.

7. These defendants deny that complainants were ignorant of the allowance and classification of said claims by said Probate Court until too late to appeal, and deny that they were without legal remedy for any grievance they had in that connection.

8. And as it is again alleged, these defendants again deny that the procuring of said judgments of the St. Francis Probate Court was wrongful, fraudulent or inequitable.

9. And as a further defense these defendants state that on the 20th day of March, 1902, the Circuit Court of St. Francis County (where the cause was pending upon remand by the Supreme Court of the case appealed from the Probate Court) ordered the administrator of the estate of Hiram Evans, (H. P. Gorman) to proceed to sell the real estate belonging to said estate, on the 4th day of June, 1902, and to report his proceedings to the St. Francis Probate Court.

That pursuant to said order, the said administrator sold said lands, being the same described in complainants' bill, on the said 4th day of June, 1902, and said sale was by Probate Court on July 22nd, 1902, in all things approved and confirmed. And from the judgment of said Probate Court, confirming said sale, complainants prosecuted an appeal to the St. Francis Circuit Court, which said appeal and the issues thereon are still pending and undisposed of in said Circuit Court.

That on the 21st day of January, 1903, the St. Francis Probate Court made an order of distribution of the funds then in the
10 hands of H. P. Gorman, administrator of the estate of Hiram Evans, deceased, among the creditors of said estate, and

under and pursuant to said order these defendants were paid their pro rata on their respective demands; and from this order of distribution complainants took an appeal to the St. Francis Circuit Court, which appeal and the issues arising thereon are still pending.

At the July term, 1903, of the St. Francis Probate Court, the said H. P. Gorman, as administrator of the estate of Hiram Evans, was discharged upon confirmation of his final settlement, he having fully administered said estate.

And having fully answered these defendants ask that they be discharged with their reasonable costs.

R. J. WILLIAMS,
N. W. NORTON,
Solicitors for Defendants.

Endorsed: No. 105. Sallie J. McDaniel, *et al., vs.* George M. Traylor, *et al.* Answer. R. J. Williams, N. W. Norton, for Defendants. I acknowledge receipt of a copy for Plaintiffs, this March 31st, 1906. J. R. Beasley, Sol. for Pl'ffs. Filed April 2, 1906. Emerson R. Crum, Clerk.

11 Before the Clerk, May 3, 1906.

105.

SALLIE J. MCDANIEL ET AL.
vs.
GEO. M. TRAYLOR ET AL.

On this day come the complainants, by their solicitors, Messrs. G. B. Webster and J. R. Beasley, and file their amendment to the original bill herein which shows objection to the filing thereof waived by the solicitors for the defendants.

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

No. 105.

MRS. SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

Amendment to Original Bill.

Come the complainants, Sallie J. McDaniel, Nannie A. Hoshall and Mary E. Jackson, by leave of the Court first had and obtained, and, by way of amendment to their original bill in this cause, respectively show the Honorable Court:

1. That since the original bill was filed complainants have learned that they made a mistake when they alleged that the drug store

property referred to therein was among the assets of the estate of Hiram Evans, who died in St. Francis County, Arkansas, on April 13, 1891.

2. Complainants state that Hiram Evans never was the owner of said drug store property or any portion thereof, no sale or
12 conveyance of said property ever having been made to him after the Supreme Court of Arkansas decided on March 1, 1890, that the sale of said property in January, 1886, by John Evans in the name of Collins & Evans to Hiram Evans was void; a decision which complainants never heard of until after John Evans' deposition was taken at St. Louis, Mo., on June 22d, 1904.

3. Complainants state that Marcus Collins and John Evans were the owners of said drug store property when Hiram Evans died and had been for years; that in January, 1885, the owners of said drug store were C. M. Hamilton, Marcus Collins and N. W. Norton; that Collins sold his one-third interest in January 1885 to John Evans; that in July or August 1885 Collins bought the one-third interest of N. W. Norton; that in August or September, 1885, Collins bought the one-third interest of C. M. Hamilton; and that in September or October, 1885, Collins sold a second one-third interest to J. J. Evans for $500.00 and took his note for the money which was not paid until February, 1892.

The Premises considered, complainants pray that they be allowed to file this amendment to their original bill in this cause; that the defendants mentioned therein be required to appear and answer this amendment thereto, but they are excused from answering under oath, the oath being expressly waived; that complainants be given the relief prayed in their original bill, and all other, proper, legal, equitable, and general relief to which they may be entitled.

And as in duty bound complainants will ever pray, &c.

Respectfully submitted,

G. B. WEBSTER,
J. R. BEASLEY,
Solicitors for Complainants.

13 STATE OF ARKANSAS, *St. Francis County:*

Mrs. Sallie J. McDaniel one of the complainants in this cause, says that she believes the statement made in the foregoing amendment to the original bill of Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.*, pending in the United States Circuit Court at Helena, Arkansas, are true. MRS. SALLIE J. McDANIEL.

Subscribed and sworn to before me this the 1st day of May, 1906.

[SEAL.] G. B. MALLORY,
Clerk of Circuit Court St. Francis County, Arkansas.

Endorsed: No. 105. In U. S. Circuit Court, Helena, Ark. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Amendment to the Original Bill. We waive objection to filing this amendment. 5/2/06. R. J. Williams, N. W. Norton, for Defts. Filed May 3d, 1906. Emerson R. Crum, Clerk, By J. B. Connolly, D. C.

Seventh Day of March Term, 1906, June 4, 1906.

105.

MRS. SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEO. M. TRAYLOR ET AL., Defendants.

On this day come the defendants herein who have been served with process, by their solicitors, Messrs. R. J. Williams, and
14 N. W. Norton, and file their answer to amendment to original bill filed herein.

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

105.

MRS. SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEO. M. TRAYLOR ET AL., Defendants.

Answer to Amendment to Original Bill.

The defendants herein, in so far as they have been served with process, saving and reserving all manner of exceptions to the insufficiencies of the amendment to the original bill, for answer thereto, say:

They deny that there was any mistake committed by complainants, in their original bill, when they alleged that the drug store was the property of Hiram Evans, at the time of his death.

They deny the truth of the statement that Hiram Evans was never the owner of said drug store or any portion thereof. * * * They admit that no sale was made to him after the decision of the Supreme Court of Arkansas, on March 1st, 1890, but they deny that it was by that court adjudged that the drug store was not the property of Hiram Evans, and defendants deny that said decision was never heard of by complainants until June 22d, 1904.

Defendants deny that Marcus Collins and John Evans were the owners of said drug store when Hiram Evans died.

They admit the ownership of said drug store in 1885, as
15 complainants allege, and admit that J. J. Evans never fully paid Marcus Collins for the drug store until 1892.

And having fully answered said amendments, defendants ask that they be dismissed.

R. J. WILLIAMS,
N. W. NORTON,
Solicitors for Defendants.

Endorsed: No. 105. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Answer to amendment to original bill. I have a copy. June 2-'06. J. R. Beasley, Sol. for Pltffs. Filed June 4, 1906. Emerson R. Crum, Clerk, By J. B. Connolly, D. C.

Before the Clerk, June 15, 1906.

105.

SALLIE J. McDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

On this day comes the complainants, by their solicitors, Messrs. G. B. Webster and J. R. Beasley, and file their replication herein.

In the United States Circuit Court for the Eastern Division of the Eastern District of Arkansas.

No. 105.

SALLIE J. McDANIEL, MARY E. JACKSON, and NANNIE A. HOSHALL, Complainants,
vs.
16 GEORGE M. TRAYLOR ET AL., Defendants.

The replication of the above-named complainants, Sallie J. McDaniel, Mary E. Jackson and Nannie A. Hoshall, to the answer of the defendants, George M. Traylor, *et al.*, to the original bill and amendment thereto filed by complainants in this cause.

These repliants, saying and reserving to themselves all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiences of the answers of the said defendants, for replication thereunto saith, that they do and will aver, maintain and prove their said bill as amended to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants to said bill and amendments are very uncertain, evasive and insufficient in law, to be replied unto by these repliants; without that, that any other matter or thing in the said answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain and prove as this honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

G. B. WEBSTER,
J. R. BEASLEY,
Solicitors for Complainants.

Endorsed: No. 105. In U. S. Circuit Court, Helena, Ark. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Replication. We have received a copy of this replication, this the 14th day of June, 1906. N. W. Norton, of Sols. for Defendants. Filed June 15th, 1906. Emerson R. Crum, Clerk, By J. B. Connolly, D. C.

17 AUGUST 14, 1906.

105.

SALLIE J. MCDANIEL ET AL., Plaintiffs,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

Now on this day come the plaintiffs, by their counsel, Messrs. G. B. Webster and J. R. Beasley, and file herein certified list of claims filed against the estate of Hiram Evans, deceased, certified copy of judgment for $500.00 in favor of Marcus Collins against J. J. Evans, rendered April 23, 1890, by Circuit Court St. Francis County, Arkansas, and certified copy of mandate and opinion of Supreme Court of Arkansas in Feucht, *et al. vs.* J. J. and H. Evans.

Record.	Page.	To whom allowed.	Filed.	Allowed.	Class.	Amount.
L	47	W. N. Wilkerson & Co.	M'ch 5, '92	M'ch 21, '92	4	3353.33
L	49	M. A. Houston	M'ch 22, '92	Apr. 4, '92	4	250.00
L	86	George M. Traylor & Co.	Aug. 19, '92	Oct. 26, '92	4	21.88
L	95	The Claus Shear Co.	Nov. 30, '92	Nov. 30, '92	4	24.48
L	95	Solon Palmer	" " "	" " "	.....	26.44
L	98	Hirsch & Bundheim	Sept. 2, '92	" " "	.....	17.50
L	98	Goodman Bros.	" " "	" " "	.....	15.00
L	98	John F. Stratton & Son	" " "	" " "	.....	71.28
L	98	Coca Cola Co.	" " "	" " "	.....	14.00
L	101	John F. Smith	Dec. 12, '92	Dec. 12, '92	.....	32.43
L	104	Liquid Carbonic Acid Mfg. Co.	" " "	Jan. 16, '93	.....	4.00
L	149	W. N. Wilkerson & Co.	July 21, '93	July 21, '93	5	1061.67
L	149	Same	" " "	" " "		589.88
L	154	A. S. Aloe Co.	" " '92	" " "		4.23
L	154	Dr. J. H. McLean Med. Co.	Aug. 21, '92	" " "		6.80
L	156	Meyer Bros. Drug Co.	Aug. 3, '92	Aug. 30, '93		548.98
L	74	Same	August —	Aug. 3, '92		400.71
L	74	Same	.....	" " "		284.17
L	74	Martin Wooden Ware Co.	.....	" " "		34.61
L	75	Levinson-Friedheim Co.	.....	" " "		25.00
L	75	C. F. Simmons Med. Co.	.....	" " "		57.29
L	75	Collier White Lead & Oil Works	.....	" " "		35.63
L	75	J. C. Mendenhall Co.	.....	" " "		23.89
L	75	J. M. Andrews Co.	.....	" " "		33.45
L	75	Harpman & Co.	.....	" " "		88.25
L	75	R. Kupperschmidt	.....	" " "		34.94
L	75	Van Vleet & Co.	.....	" " "		15.85
L	75	Alfred Wright	.....	" " "		73.33
L	75	Meridian Silver Plate Co., note	.....	" " "		125.69
L	75	Meridian Silver Plate Co., note	.....	" " "		125.69
L	75	The Memphis Paper Co.	.....	" " "		8.85
L	75	Sternberg & Sons	.....	" " "		45.25

Expenses of administration

19 STATE OF ARKANSAS, *St. Francis County:*

I, T. C. Merwin, Clerk of the Probate Court of St. Francis County, Arkansas, do hereby certify that the foregoing is a true, perfect and complete list of the claims filed in my office against the estate of Hiram Evans deceased, as the same appears of record on page 145 of the Abstract Book of Claims in my office; and I further certify that all of said claims were allowed by said Probate Court as expenses of administration, except the claim of M. A. Houston for $250.00, the claim of W. N. Wilkerson & Co. for $3353.33, and the claim of W. N. Wilkerson & Co. for $1061.67.

Witness my hand and seal of office this the 26 day of July 1906.

[SEAL.] T. C. MERWIN, *Clerk.*

Endorsed: No. 105. In U. S. Circuit Court, Helena, Ark. Sallie J. McDaniel *et al. vs.* George M. Traylor *et al.* Pl't'ffs Proof. Certified List of Claims filed against the estate of Hiram Evans, dec'd. Filed August 14, 1906. Emerson R. Crum, Clerk.

Circuit Court Record, St. Francis County, Ark., April Term, April 23, 1890.

MARCUS COLLINS, Plaintiff,
vs.
J. J. EVANS, Defendant.

Judgment.

On this day, on the calling of this cause, comes the plaintiff, by his attorney J. D. Block, and the defendant having been served
20 in due time with process of summons made default, and the plaintiff having moved the Court for judgment for the amount of the note for want of an answer, the same is given. And it appearing that this action is founded upon a promissory note executed by the defendant for five hundred dollars — dated October — 1885 and due October — 1886 with 6 per cent. interest due the plaintiff. It is therefore considered, ordered and adjudged by the court that the plaintiff, Marcus Collins, have and recover of any from the defendant, J. J. Evans, the sum of five hundred dollars with six per cent. interest from date until paid, for which execution may issue.

STATE OF ARKANSAS, *St. Francis County, ss:*

I, George B. Mallory, Clerk of the Circuit Court of St. Francis County, Arkansas, do hereby certify that the foregoing is a true, perfect and complete copy of the judgment rendered by the Circuit Court of said county on the 23d of April, 1890, in favor of Marcus Collins against J. J. Evans, as the same appears of record on Circuit Court Record H, p. 519, in my office.

And I further certify that execution was issued on said Judg-

ment Jan. 2, 1892, and returned Feb. 29, 1892, "satisfied in full," as appears from Execution Docket A, page 193, in my office.

Witness my hand and seal of office this the 21st day of July, 1906.

[SEAL.] G. B. MALLORY,
Clerk of the Circuit Court.

21 Endorsed: No. 105. In U. S. Circuit Court, Helena, Ark. Sallie J. McDaniel *et al. vs.* George M. Traylor *et al.* Pl't'ffs' Proof. Certified copy of judgment for $500.00 in favor of Marcus Collins against J. J. Evans, rendered April 23, 1890, by Circuit Court St. Francis County, Ark. The Clerk's certificate to this judgment shows that execution was issued Jan. 2, 1892, and returned Feb. 29, 1892, "satisfied in full." Filed August 14, 1906. Emerson R. Crum, Clerk.

STATE OF ARKANSAS, *in the Supreme Court, sct:*

Be it remembered, that at a regular term of the Supreme Court of the State of Arkansas, begun and holden at the Court house in the City of Little Rock on the 25th day, being the 4th Monday of November, A. D. 1889, amongst others were the following proceedings, to-wit: On the first day of March, A. D. 1890, a day of said term:

SIMON FEUCHT ET AL., Appellant,
vs.
J. J. & H. EVANS, Appellee.

Appeal from St. Francis Circuit Court. In Chancery.

This cause came on to be heard upon the transcript of the record of the Circuit Court of St. Francis County in Chancery, and was argued by solicitors; on consideration whereof it is the opinion of the court that there is error in the proceedings and decree of said Circuit Court in Chancery in this cause in this: Said Circuit Court erred in dismissing plaintiffs' bill for want of equity.

It is therefore ordered and decreed by the court that the decree of said Circuit Court in Chancery in this cause rendered, be,
22 and the same is hereby, for the error aforesaid, reversed, annulled and set aside with costs; and that this cause be remanded to said Circuit Court in Chancery with directions to enter a decree in accordance with the Opinion herein delivered.

It is further ordered and decreed that said Appellants recover of said Appellees all their costs in this court in this cause expended, and have execution thereof.

In testimony, That the above is a true copy of the decree of said Supreme Court, rendered in this case therein stated, I, W. P. Campbell, Clerk of said Supreme Court, hereunto set my hand and affix the seal of said Supreme Court, at my office in the City of Little Rock, this 11th day of September, 1890.

[SEAL.] W. P. CAMPBELL, *Clerk,*
By P. D. ENGLISH, *D. C.*

STATE OF ARKANSAS, *in the Supreme Court, set:*

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 25th day, being the 4th Monday of November, A. D. 1889, at the court house in the City of Little Rock, the following opinion was delivered by the Court in the case of:

No. 93.

SIMON FEUCHT ET AL., Appellant,
vs.
J. J. & H. EVANS, Appellee.

Appeal from St. Francis Court. In Chancery.

In the Supreme Court of Arkansas, March 1, 1890.

FEUCHT, BLACK, ET AL.
vs.
EVANS ET AL.

23 *Opinion.*

HEMINGWAY, *J.:*

Upon an examination of the evidence we cannot find that the sale was made with intent, in fact, to hinder, delay or defraud the creditors of Collins & Evans. On the contrary, we think it was made by a son, unsuccessful in business ventures to repay in part, loans from an indulgent father. The purpose that prompted it was commendable.

But did J. J. Evans have the authority to make the same? Or was it a transaction from which the law implies fraud?

It appears by the recitals of the bill of sale, that the property in controversy belonged to a firm composed of J. J. Evans and Marcus Collins; and J. J. Evans claimed to have bought only a two-thirds interest in the business. We therefore find that the property belonged to a firm of which he was a member. It was sold to satisfy a debt due to H. Evans for money loaned. A part of the loan was made to the firm and went to pay firm debts; but a part, and it would seem the greater part, was made to J. J. Evans, to aid him in buying his interest in the business.

It is a general rule in commercial matters that, with respect to all articles kept by a partnership to be sold, for the benefit of the concern, each partner has, in the course of trade, the right to dispose of any part or the whole. This authority is general and implied from the relation, because it is necessary to the expeditious and successful prosecution of the business, but being founded upon this reason, it is subject to the condition, that it must be exercised in the course of the partnership business. The satisfaction of the individual liabilities of one partner is not within the scope of partnership; therefore no partner has any authority, implied from the relation,
24 to dispose of part-ship effects to satisfy his individual indebtedness? This may be done by the consent of his co-

partner and such consent is sometimes implied from the past dealings between the partners. But consent, either express or implied, is necessary to authorize it.—Parsons on Part. 202-13.

The sale was made by one partner without the knowledge or consent of his co-partner. It was made to satisfy an individual liability and not in the course of business, and this was known to the purchaser. It was therefore void.

Although no wrong was intended, the partnership effects were illegally delivered to the purchaser, to be by him disposed of for his own benefit. The effect was improperly to hinder and delay the partnership creditors, and from this the law presumes fraud.

This case does not involve the question of the right of one partner to dispose of the partnership effects and business to satisfy or secure firm debts. That we have not felt called to consider or decide.

The plaintiffs were entitled to a decree cancelling the bill of sale, in order that they might sell the property for the satisfaction of their claims.

It does not appear that they cause the property to be impounded, but they are now entitled to have such of it sold as can be seized.

The judgment will be reversed and the cause remanded with directions to enter a judgment in accordance with the law as herein announced.

In testimony that the above is a true copy of the opinion of the Supreme Court in the case herein stated,

I, W. P. Campbell, Clerk of said Court, hereto set my hand and affix the seal of said court at my office in the City of Little Rock, this the 11th day of September, A. D. 1890.

25 [SEAL.] W. P. CAMPBELL, *Clerk*,
By P. D. ENGLISH, *D. C.*

STATE OF ARKANSAS, *St. Francis County, ss:*

I, George B. Mallory, Clerk of the Circuit Court of St. Francis County, Arkansas, and *ex-officio* Clerk of the Chancery Court of said county, do hereby certify that the foregoing is a true, perfect and complete copy of the Mandate and opinion of the Supreme Court of Arkansas in the case of Simon Feucht, *et al. vs.* J. J. and H. Evans, as the same appear on file in my office, and which were filed therein on Sept. 12, 1890.

Witness my hand and official seal, this the 19th day of July, 1906.

[SEAL.] G. B. MALLORY,
Circuit Court Clerk.

Endorsed: No. 105. In U. S. Circuit Court, Helena, Ark. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Pl'tiffs' Proof. Certified copy of mandate & opinion of Supreme Court of Ark. in Feucht, *et al. vs.* J. J. & H. Evans. Filed August 14, 1906. Emerson R. Crum, Clerk.

26 # 105.

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

SALLIE J. McDANIEL ET AL.
vs.
GEORGE M. TRAYLOR ET AL.

Notice.

To George M. Traylor, *et al.*, the above named defendants, and to their attorneys, N. W. Norton and R. J. Williams:

You are hereby notified that the depositions of witnesses to be read in evidence on behalf of the plaintiffs will be taken at the office of the Clerk of the Circuit Court of Cross County, Arkansas, in the town of Wynne, on Thursday, the 23d day of August, 1906, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon; and that the taking of said depositions, if not completed on said day, will be continued from day to day until completed, at the same place and between the same hours.

G. B. WEBSTER,
J. R. BEASLEY,
Solicitors for Plaintiffs.

August 16, 1906.

Endorsed: No. 105. In U. S. Circuit Court, Helena, Ark. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Notice. For taking depositions. I acknowledge service of a copy of this Notice. This August 16th, 1906. N. W. Norton, of Counsel for Def'ts.

27 The deposition of Marcus Collins, taken on the 23d day of August, 1906, between the hours of eight o'clock in the forenoon, and six o'clock in the afternoon, at the office of the Circuit Court Clerk of Cross County, Arkansas, in the Town of Wynne, to be read in evidence on behalf of the plaintiff in the cause pending in the United States Circuit Court, at Helena, Arkansas, wherein Sallie J. McDaniel, *et al.* are plaintiffs and George M. Traylor, *et al.*, are defendants.

Said witness being first duly sworn, deposes as follows:

Q. What is your name, age, place of residence, and occupation?

A. My name is Marcus Collins, I am fifty-four years old, I live in Wynne, Ark., and am a merchant.

Q. If you were ever in partnership with C. M. Hamilton, and N. W. Norton, in the drug business, please state when and where the partnership was formed, and when and how it was dissolved, and all about it as briefly as you can?

A. Partnership was formed in Forrest City, Ark., in 1884. In 1885 I bought an interest with Hamilton and Norton in Wittsburg. Sometime in Jan. or Feb., 1885, I sold my interest to Bud Evans, at Forrest City, in the drug business at that place.

Q. After you sold out your interest in the drug store at Forrest City, Ark., to Bud Evans, whose true name is John J. Evans, state whether or not you bought the third interest of C. M. Hamilton in the drug business in that town, and if so, when it was and what you did with it?

A. Sometime during the summer of 1885, I bought C. M. Hamilton's interest in the drug business at Forrest City, I sold that interest to J. J. Evans in the fall of 1885.

Q. Did J. J. Evans pay you in cash for the second one-
28 third interest you sold him in the drug business in Forrest City, or did he execute his note to you for the money?

A. He executed his note to me for the money.

Q. What price did J. J. Evans agree to pay you for the second one-third interest?

A. Five hundred dollars.

Q. After you bought Hamilton's interest in said drug store at Forrest City, in the summer of 1885, and before you sold it to John J. Evans in the fall of 1885, what change if any was made in the name of the firm?

A. I think it was changed to Collins and Evans.

Q. It appears that on April 29, 1886, N. W. Norton got a judgment against you in the Circuit Court of Cross County, Arkansas, for five hundred dollars and cost, which judgment the garnishees, Bedford and Hamilton, were ordered to pay to N. W. Norton, the plaintiff in that suit. Where were you at that time, and upon what grounds did Norton claim that you were indebted to him in the sum of five hundred dollars?

A. I was in Covington, Kentucky, when Norton brought suit, he claimed that I owed him five hundred dollars for his one-third interest in the drug store in Forrest City.

Q. Has that judgment in favor of Norton against you ever been paid or not?

A. It has.

Q. After Norton compelled you to pay for his third interest in said drug store, what did you do with the interest you got from him? Did you ever sell it to anybody, or give it to anybody?

A. No, sir.

Q. Where were you living in Jan., 1885, and in April, 1891.

29 A. In Jan. 1885, I was living in Wittsburg. In April, 1891, I was living in Wynne.

Q. Was Wittsburg the county site of Cross County, in Jan., 1885, or not?

A. I could not state positively.

Q. When you dissolved partnership with Hamilton and Norton in the drug business at Wittsburg, did they buy you out or did you buy them out?

A. I bought them out.

Q. Did you buy Norton's interest in the drug store at Forrest City or not, and if not, how was it? State all you wish to say on this point?

A. At one time I contracted for it verbally, but afterwards told Mr. Norton that I did not want it.

Q. In what year and what month was it that you contracted, verbally with Mr. Norton for his third interest?

A. Sometime in the summer of 1885.

Q. When you contracted with Mr. Norton for his said interest, did you want it for yourself or for some one else?

A. I was figuring on buying it for myself.

Cross-examined:

Q. Did you contract with N. W. Norton for his one-third interest while the style of the firm was C. M. Hamilton & Co. or was it after the firm had been changed to Collins and Evans?

A. It was after the firm name had been changed to Collins and Evans, Hamilton had gone out of the firm.

Q. How long were you a member of the firm of Collins and Evans?

A. Two or three months.

Q. When was the firm changed from C. M. Hamilton to Collins and Evans?

30 A. Some time in Aug. or Sept. 1885.

Q. What claim have you made at any time since you retired from the firm of Collins and Evans to any interest in the drug business at Forrest City which was carried on by J. J. Evans or Bud Evans?

A. None.

Q. So then you have set up no claim to any interest in the drug business conducted by Collins and Evans, in 1885, at Forrest City, and afterwards by J. J. Evans, for about twenty years or more?

(Objected to as leading.)

A. No.

Q. Did Norton claim to have sold you a third interest in the business of the firm of Collins and Evans at Forrest City, before or after you had retired from the said firm?

A. It was after I had retired from the firm and had moved to Kentucky.

Q. You stated on your examination in chief that you had contracted verbally with N. W. Norton at Forrest City, for his one-third interest in said firm and that before you left Forrest City you told Norton that you would not have his interest, did that in your judgment end the deal between you and Norton?

A. Yes.

Q. What was the estimated value of Norton's interest in said business at the time you and he were negotiating for it?

A. About five hundred dollars.

Q. State whether or not there was any memorandum or agree-

ment in writing about the sale from Norton to you which was signed by you?

A. There was none.

31 Re-examined in chief:

Q. You say you were in Kentucky when Norton sued you for five hundred dollars. When did you go to Kentucky, and how long did you stay there?

A. I left Forrest City in Oct. or Nov. 1885, and stayed in Kentucky until Sept. 1889.

Q. Did you know before you left for Kentucky that Norton would claim that you owed him five hundred dollars, for his interest in said drug store at Forrest City?

A. I did not think he would.

Q. After you returned from Kentucky, did you take any legal step against Norton to recover that five hundred dollars, if so, what did you do?

A. I asked the court for a rehearing.

M. COLLINS.

STATE OF ARKANSAS, *County of Cross:*

I, A. H. Hammett, Clerk of the Circuit Court, do certify that the foregoing deposition of Marcus Collins was taken before me and was — to and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said Collins having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth and nothing but the truth, and that his statements were reduced to writing by me in his presence, the plaintiffs, and the defendants being present by attorneys at the examination.

Given under my hand and seal this the 23d day of Aug., 1906.

A. H. HAMMETT, *Clerk,*

[SEAL.] By JAS. HAMMETT, *D. C.*

32 Endorsed: No. 105. Deposition of Marcus Collins taken Aug. 23, 1906. Sallie J. McDaniel, *et al. vs.* Geo. M. Traylor, *et al.* Filed August 25, 1906. Emerson R. Crum, Clerk.

Cross Circuit Court, April Term, April 29th, 1886.

No. 31.

N. W. NORTON
vs.
MARCUS COLLINS.

Comes the plaintiff and moves the court for judgment for want of answer for amount claimed, and sustained the attachment, and it appearing to the court that due publication of warning order was made, and that an attorney for the non-resident defendant was duly

appointed and has made his report and that the defendant has failed to plead, answer or demur, it is by the court considered and adjudged that the plaintiff have and recover of and from the defendant Marcus Collins, to be made out of the debt attached in this action the sum of five hundred dollars and all cost of this cause expended; and the attachment herein is by the court sustained, and the garnishees herein having the answer, and it appearing thereupon the garnishee Bedford & Hamilton are indebted to the defendant Marcus Collins in the sum of thirty dollars, and the further sum of five hundred and forty dollars due July the 1st, 1886; and the further sum of five hundred and forty dollars, due January 1, 1887, it is by the court considered and adjudged that the garnishees, Bedford & Hamilton, pay to the plaintiff N. W. Norton, the thirty five dollars now due as shown by the answer; and that of their debt to the defendant Marcus Collins, coming due July the 1st, 1886, by their answer, it is by the court adjudged that when the same is
33 due, that they pay the same to the plaintiff, N. W. Norton or so much thereof as may be necessary to satisfy this judgment for five hundred dollars and all costs; and for payment so made said Bedford & Hamilton will be discharged from so much of their debt to said defendant; this judgment to take effect upon filing of the bond as required by law.

STATE OF ARKANSAS, *County of Cross:*

I, A. H. Hammett, Clerk of the Circuit Court and *ex-officio* Clerk of the County and Probate Courts and Recorder of Cross County, do hereby certify that the above going is a true and complete copy of Circuit Court Record "B" Page 232, now remaining in my office.

Given under my hand and seal this 26th day of June, 1906.

[SEAL.] A. H. HAMMETT, *Clerk.*

The amount of the above judgment was paid to me and it was for my one-third interest in a drug store at Forrest City, Ark., which I sold Marcus Collins.

July 13th, 1906.

N. W. NORTON.

Endorsed: No. 105. In U. S. Circuit Court, Helena, Ark. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Plaintiffs' Proof. Certified copy of judgment Cross Circuit Court, of April 29, 1886, for $500.00, in favor of N. W. Norton against Marcus Collins. Filed October 1, 1906. Emerson R. Crum, Clerk.

34 Deposition of James Evans, taken on the 22d day of Sept. 1896, by consent of parties, to be used on the part of the plaintiff in the case of W. E. Evans, *et al. vs.* James Evans, Administrator, now pending in the St. Francis Circuit Court.

JAMES EVANS, being first duly sworn, testified as follows:

Q. How long was it after the death of your father, H. Evans, before you and the other heirs met at the old homestead and had a conversation concerning the disposition of the drug store belonging to his estate?

A. A couple of days.

Q. State what was said and agreed to at that meeting in regard to the drugstore.

A. J. J. Evans wanted to know if the heirs would let him have the drug store if he would pay all the indebtedness against it, and finally all the heirs agreed that they would.

Q. State whether or not in pursuance of that agreement, J. J. Evans went to Memphis to see W. N. Wilkerson & Co. about the claim they held against the drug store?

A. He did.

Q. State whether or not shortly after his return from Memphis a member of said firm of W. N. Wilkerson & Co. came over here to Forrest City to see about the matter, and also state fully what arrangement was made?

A. J. J. Evans returned from Memphis and said: "Jim, I want you to meet me in the morning at town; Mr. Chilton will be over in the morning, and he will want to make arrangements about the drug store. I came to town the next morning; walked into the drug store; I reckon I was in a quarter of an hour when Mr.
35 Chilton came in, and a few words passed, and J. J. Evans said: "Now, Mr. Chilton, here is Jim. I will make the statement now to you. I want to know, will you release the estate of all the indebtedness due to your firm and take me for it." Mr. Chilton paused a few minutes and said: "Yes, I will release the estate for it and give you your time, and go on as you have been going on." I said: "All right, that releases me." They went on fixing up the papers, and I paid no more attention to them.

Q. What part of the drug store were you in when this agreement was made?

A. I was in the office next to the stove, on the right hand side; Mr. Chilton was on the left, on the outside of the office railing, standing up against it; and J. J. Evans was on the inside.

Q. How long, or about how long, was this after you took out your letters of administration?

A. I can't say exactly. It may have been a week or two weeks, or it may have not been so long.

Q. State whether or not, in pursuance of said agreement between yourself and Mr. Chilton and J. J. Evans, you have mentioned above, you turned over the drug store to J. J. Evans as his property, and whether or not you ever exercised any more control over it until he transferred it back to you more than a year afterwards?

A. Yes sir, I turned it over to him, the stock of drugs, book accounts, and all the fixtures, etc., in the house; and I had nothing more to do with it until J. J. Evans transferred it back to me thirteen or fourteen months afterwards.

Q. Did you know Mr. Chilton when he came over here? If so, how long had you known him; and did you know that he was a member of said firm of W. N. Wilkerson & Co.?

36 A. Yes sir, I knew him. I had known him for about ten or eleven years, and I knew that he was a member of the firm of W. N. Wilkerson & Co.

Q. State whether or not you ever saw Mr. Chilton any more after the agreement was made with him above mentioned.

A. No, I have never seen him since that time.

Q. Did you see him when the note was probated, March 1892?

A. No sir.

Q. Who presented that note to you for allowance?

A. R. J. Williams.

Q. Did you know when Mr. Williams presented this note to you for allowance that he was the attorney for W. N. Wilkerson & Co.?

A. No sir, I did not.

Q. Did he, Mr. Williams, advise you to allow this note?

A. Yes sir, of course.

Q. Would you have allowed it had he not advised you to do so?

A. No sir, I would not under the circumstances.

Q. State why you did allow this note against the estate, knowing as you did that it was not a just claim against the estate, since Mr Chilton had released the estate from it and taken J. J. Evans for it

A. Upon the advice of my attorney, R. J. Williams. He said the estate was bound for it, and I said: "Mr. Williams, I can't see how the estate is bound for it when they took J. J. Evans and released the estate." That all happened after J. J. Evans failed. took his advice because I thought he knew better than I did.

Q. Did you see Mr. Chilton when the open account of $1061 in favor of his firm against the estate was presented to you for allowance?

37 A. No sir.

Q. Who presented this account to you for allowance?

A. Mr. Williams said that Mr. Chilton and Wilkerson gave him the claim to fetch over for them to have it allowed. Mr. Williams made it appear to me that they handed it to him to hand to me the Administrator.

Q. Did you know at this time that Mr. Williams was the attorney of W. N. Wilkerson & Co.?

A. No sir, I did not.

Q. State when you did first find out that Mr. Williams was the attorney for W. N. Wilkerson & Co.?

A. About a month ago, when he had a subpœna served on me to appear in the Probate Court. Then I found out that he was representing W. N. Wilkerson & Co.

Q. State who has been your attorney ever since you took out letters of Administration on the estate of H. Evans?

A. R. J. Williams.

Q. State whether or not you have had any other attorney, or acted upon the advice of any other attorney, in the settlement of said estate since you have been the Administrator?

A. No sir.

Q. State when Mr. Williams ceased to be your attorney in the management of said estate.

A. Something over a month or two months ago.

Q. Did he make your last settlement for you as such administrator, filed in the Probate Court a few months ago?

A. Yes, he did.

Q. Mr. Chilton in his deposition in this case states that he learned from you that J. J. Evans had not made the purchase of the drug store and was premature in assuming that he had. State whether or not this is true?

38 A. No sir. Mr. Chilton never had a conversation with me after the time above referred to when he released the estate from his claim.

Q. Mr. Chilton also states in his deposition that when he went to Forrest City to probate his open account, or at any rate, on one occasion when he was in Forrest City, that he and you and R. J. Williams had a conference in which the fact that the drug store had never become the property of J. J. Evans was alluded to, and that some of you had the notes made by J. J. Evans to W. N. Wilkerson & Co. representing the open account. State whether or not this is true, and also state whether you ever saw these notes.

A. It is not true; and I have never seen these notes. And I never heard of them before.

Q. After you turned the drug store over to J. J. Evans shortly after your father's death, state whether or not he after that time ordered goods in his own name?

A. Yes, he did.

Q. State whether or not the sign and letter heads, bill heads, etc., of the store were changed?

A. All his bill heads and labels were changed I know. I don't remember whether the sign was changed or not.

Q. State as near as you can the whole conversation which took place between you, J. J. Evans, and your attorney, R. J. Williams, at the time you took the drug store back from J. J. Evans.

A. J. J. Evans came to me and said: "I have failed. I reckon you will have to take the drug store back." This was in May or June, 1892. I said: I can't take it back." "Well," he said, "I don't know what to do with it." Then he went off and came back to me and said: "Let's go and see R. J. Williams about it;"

39 and we went up in Mr. Williams' office, and Mr. Williams said: "I reckon you will have to take this back." Said that to me. I said: "Mr. Williams, I can't see into that." And it went on, and they had something between them, I don't know exactly what it was about; I couldn't explain it. He went on, and Mr. Williams said to me: "You will have to take a bill of sale back for it from J. J. Evans." And he wrote one for J. J. Evans to sign to

myself. I never read it myself. I said: "Mr. Williams, I will leave it all to you." I believe that was about all of the conversation. R. J. Williams told me after that that J. J. Evans would have to appear in there as agent for the time that he had held the drug store.

Q. Why did you allow the debts which had been contracted by J. J. Evans while he was running the drug store for himself as claims against the estate?

A. My attorney, R. J. Williams, advised me to allow them all, and I thought it was right.

Q. Mr. Chilton in his deposition says that you allowed their account for goods sold to J. J. Evans because you were claiming that the drug store was the property of the estate, and always had been, and that J. J. Evans had never become the owner of it. State whether or not this is true?

A. I made no such statement to Mr. Chilton until after I had taken it back. I then wrote him that I would run it in the interest of the estate hereafter.

Q. Mr. Chilton also states in his deposition that you and Mr. Williams, who represented you, talked about it in his presence and came to the conclusion that as the drug store had all the time been the property of the estate that the estate would have to pay for the goods that J. J. Evans bought for it.

A. I never had any such conversation with Mr. Chilton.

40 I never had but one conversation with Mr. Chilton in my life relative to this business and that was the morning Mr. Chilton came over here and I turned the drug store over to J. J. Evans.

Q. Did you ever get an order of the Probate Court allowing you as Administrator to continue the drug business?

A. I don't know.

Q. Why did you never include the book accounts of the drug store in your inventory of the estate?

A. Because it was turned over to J. J. Evans as part of the drug store. That was the deal that the heirs agreed to. He was to have all the accounts, and all the contents of the house.

Q. State whether or not all of the heirs ever met here in Forrest City and discussed the question of turning over the drug store to J. J. Evans.

A. I don't remember. If they did, I don't remember. It was done at home.

Q. State as near as you can how much J. J. Evans was worth at the time you turned the drug store over to him and Mr. Chilton released the estate from the debts and took him for them.

A. The drug store was worth about four thousand; the book accounts, I don't know what they were worth. He got two thousand dollars from the division of the money after his father's death. His interest in the balance of his father's estate was worth about five thousand dollars. I understood he got something from the P. H. Evans estate, but I don't know how much.

Q. State whether either of these claims of W. N. Wilkerson & Co.

were presented to you for allowance against the estate until after J. J. Evans was in a failing condition?

41 A. No, he was in a failing condition before they were presented to me. He was a member of the firm of J. D. Davenport & Co. which had failed here just before or about the time the note was presented to me for allowance.

Q. State whether or not your attorney, Mr. R. J. Williams, gave you any advice about the disposition of the drug store, or what you ought to do with it, until after you took it back from J. J. Evans, a year or more afterwards?

A. I think there was some talk about it after the disposition of it, then after he failed of course he gave me advice to take it back.

Q. Is this the first time he ever gave you any advice about it?

A. There was some advice between that time. I told my lawyer I had nothing to do with the drug store. Then after J. J. Evans failed he advised me to take it back, and I said: "I don't see how that is."

Q. I will ask you again, when was the first time your attorney, Mr. Williams, gave you any advice as to what you should do with the drug store?

A. The first time was the time J. J. Evans failed and I took it back.

Q. You have stated that the drug store, at the time you sold it to J. J. Evans, was worth, exclusive of the book accounts, about four thousand dollars. State as near as you can what it was worth when you took it back from him.

A. I cannot say. It was in bad shape. I suppose it was worth about fifteen or sixteen hundred dollars.

Q. Was the stock run down?

A. Yes sir.

42 Q. Have you ever received any money from any of the purchasers of the land that you sold belonging to this estate?

A. No sir. None except from one party, and one of the purchasers at the last sale, and I have paid that back.

Q. Have you executed a deed to any of the purchasers?

A. No sir.

Q. Have any of the purchasers ever tendered money and demanded a deed?

A. No.

Q. Under the terms of the sale are not these payments long past due?

A. Yes sir.

Cross-examination:

Q. Didn't Mr. T. R. Hoshall, the husband of Mrs. Hoshall, who is plaintiff, bid in some of the land at one of the sales made by the Administrator?

A. His son, Ernest Hoshall, bid in some of it. T. R. Hoshall was present at the sale.

Q. When you say J. J. Evans failed, do you have reference to the time when he turned you back the drug store?

A. One time. He failed twice.
Q. What are the two failures then that you talk about?
A. He failed the first time with Davenport. This was early in 1892, March or April. In May or June of the same year he turned the drug store back, and that is what I call another failure.
Q. Hadn't he also failed before that as Collins & Evans?
A. I know nothing about that. I wasn't here at the time, I heard talk of it.
Q. Where were you at that time?
43 A. I think I was in Little Rock.
Q. Did you take a bill of sale from J. J. Evans when you took the drug store back?
A. Yes sir. There was a bill of sale. I reckon there was a bill of sale. I never read it.
Q. Do you know whether you got it in your possession or not at that time?
A. I don't know.
Q. Do you know *whether* it is now?
A. No sir.
Q. Was there ever a time when you did know where it was?
A. At that time I did, that evening.
Q. Then you have not seen it since, and don't know whether you got hold of it then or not?
A. No sir, to come down to the truth of it I don't know whether I did or not.
Q. The plaintiffs in this case all live here in this neighborhood, do they not?
A. All except J. J. Evans and W. E. Evans.
Q. Isn't it true that your sisters, three of the plaintiffs, have always acted together in whatever was done, or proposed about the estate, that is, hav-n't they always consulted each other?
A. I couldn't tell you. They have been sort of miffed at me ever since the old man's death.
Q. Are they not all on good terms with each other and frequently together?
A. I often see them together.
Q. Are you not on good terms with them now?
A. Just like I always was, there is nothing wrong with myself. I was never mad with them, they were the ones that were mad with me.
Q. I see on your bond as administrator of this estate the name of Eliza J. Evans. Please state who she was.
44 A. She was the wife of my father.
Q. Mother of the plaintiffs?
A. Yes. She is dead. She died about a year after my father, H. Evans.
Q. Did the plaintiffs inherit any property from her?
A. It is so said. I don't know. I don't know how much they got, but I know she had property. She ought to have had several thousand dollars.
Q. I see S. P. McDaniel is a surety on your bond as Administrator

of this estate. Is he related to either one of the plaintiffs? If so, how?

A. He is the husband of one of the plaintiffs, Sallie.

Redirect examination:

Q. Were you not an unwilling witness in this cause? Were you not forced by a subpœna to come and give your deposition?

A. Yes sir.

Q. In your cross examination you have stated that you did not know what property your step-mother, Eliza Evans, left. State what became of the $16000 or $17000 in money which your father gave her just before his death.

A. She divided it up among all of the children before her death, keeping a child's part for herself. She did this a few days after my father's death.

Q. Have you ever administered on an estate before this one?

A. No sir.

Q. Did you know anything about the business of settling an estate?

A. No sir. I never was in a lawsuit in my life and know nothing about law.

Cross-examination:

Q. Did you get a child's part of the money divided by your step-mother on the occasion you have just testified about, when
45 she took a child's part?

A. Yes. It was about two thousand dollars. There were seven children, counting the widow as a child. She took a child's part.

JAS. EVANS.

(*Affidavit Before a Notary Public.*)

STATE OF ARKANSAS, *St. Francis County:*

I, George B. Mallory, Clerk of the Circuit Court of St. Francis County, Arkansas, and *ex-officio* Clerk of the Chancery Court of said county, do hereby certify that the foregoing is a true, perfect and complete copy of the deposition of James Evans, taken on the 22d day of Sept. 1896, before Virgil Owen, Notary Public, to be read in behalf of the plaintiffs in the Equity suit of W. E. Evans, *et al. vs.* Jas. Evans, Admr., *et al.*, as the same appears in my office. And I further certify that all of those who filed claims in the Clerk's office of the Probate Court against the estate of Hiram Evans, deceased, were made defendants to said suit except M. A. Houston.

Witness my hand and seal of office this the 26th day of September, 1906.

[SEAL.] G. B. MALLORY, *Clerk.*

Endorsed: No. 105. In U. S. Circuit Court, Helena, Arkansas. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Plaintiff's Proof. Certified copy of James Evans' deposition of Sept. 22, 1896. Filed October 1, 1906. Emerson R. Crum, Clerk.

46 In St. Francis Probate Court, July 21, 1897.

In the Matter of the Estate of H. EVANS, Deceased, H. P. GORMAN, Adm'r in Succession.

On this day comes H. P. Gorman, Adm'r in Succession of the Estate of H. Evans, deceased, by Norton & Prewett, his attorneys, and presents his petition for an order directing a sale of the lands belonging to said estate for the purpose of paying the debts probated and allowed; and also presents proof of publication of Notice that this application would be made at this term of this court. And the court finds that said notice was sufficiently published in the St. Francis County Democrat, a newspaper published in St. Francis County, and that the petition is properly verified by the affidavit of the Administrator.

And said petition showing the debts allowed by the court against the estate, and the appraisement and sale bills being presented therewith, the Court finds that the personal estate is insufficient to pay the debts.

And it further appearing from said petition that the lands of said estate are as follows:

(Clerk here copy them from petition.)

It is by the court considered, adjudged and ordered that the petitioner, H. P. Gorman, as Administrator in succession of the estate of H. Evans, deceased, sell said lands at public auction to the highest and best bidder, at the Court house door in Forrest City, St. Francis County, Arkansas, on the 28th day of August, 1897, on a credit, one-third of the purchase money payable in three months, and the remaining two-thirds payable in six months from the day of sale, the whole to bear interest at six per cent. from date till paid.

Said administrator will first give notice of the time, terms and place of sale, by posting ten written or printed notices in as many public places in St. Francis County twenty days before the day of sale, and will also, prior to said sale, have said lands ap-

47 praised by three disinterested householders of St. Francis County.

Purchasers will be required to give note and approved personal security, and a lien will be retained on the land for the purchase money.

The Administrator herein will report his proceedings hereunder to this Court.

STATE OF ARKANSAS, *St. Francis County:*

I, T. C. Merwin, Clerk of the County Court of St. Francis County, Arkansas, and *ex-officio* clerk of the Probate Court of said County, do hereby certify that the foregoing is a true and perfect copy of the Order made by said Probate Court on the 21st day of July, 1897,

in the Matter of the estate of Hiram Evans, deceased, as the same appears from the record in my office.

Witness my hand and seal of office, this the 24th day of September, 1906.

[SEAL.] T. C. MERWIN, *Clerk.*

Endorsed: No. 105. In U. S. Circuit Court, Helena, Arkansas. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Plaintiffs' Proof. Certified copy of Probate Court Order of July 21st, 1897 for Sale of Lands of H. Evans' estate. Filed October 1, 1906. Emerson R. Crum, Clerk.

48 Law Record K, St. Francis County, Ark., 10th Day, March Term, Thursday, March 20, 1902.

H. P. GORMAN, Adm'r in Suc. of the Estate of HIRAM EVANS, Deceased, Pl'ff.,

vs.

MARY E. JACKSON ET AL., Def'ts.

Renewal Order of Sale.

On this day come the parties and the defendant moves the Court to continue this cause for the term, which motion is considered by the court and overruled.

And it appearing to the court from the Record in this cause that on the 21st day of July, 1897, an order was made and entered of record at page 474 of Book L of the Records of the Probate Court of St. Francis County ordering and directing H. P. Gorman, Adm'r in Suc. of the estate of H. Evans deceased, to sell for the purpose of paying the claims presented and allowed against said estate, certain lands named in said order and belonging to said estate; that by reason of an injunction (which has since been dissolved) said Adm'r was prevented from making said sale on the day named in said order; that on the 29th day of January, 1900, an order was made and entered of record at page 192 of Book M of the Records of the Probate Court of St. Francis County, naming the 28th day of February, 1900, as the day upon which said lands should be sold under the former order of said Probate Court, and by reason of the appeal taken by defendants to this court said Adm'r was again prevented from making said sale on said day.

That upon a hearing of said appeal on the 16th day of March, 1900, the said Probate Court Order of Jan. 29, 1900, was in all things affirmed, and this court by its order entered of record at page 535 of book "I" of the records of this court, ordered and directed that said lands be sold on the 4th day of June, 1900;

49 that said Adm'r was again prevented from making said sale on said day by reason of defendants' appeal to the Supreme Court; that the said Supreme Court has affirmed the said Order of this Court, as appears from the Mandate filed herein.

And the plaintiff moving for judgment on the Mandate.

It is by the court considered, ordered and adjudged that the 4th day of June, 1902, be and the same is hereby named as the day upon which the sale of said lands shall be made.

And H. P. Gorman, Adm'r in Suc. of the estate of H. Evans deceased is hereby ordered to sell on said day the lands aforesaid, described in said Probate Court Order of July 21st, 1897, as directed in said order, and that he report his proceedings to the next term of the Probate Court of St. Francis County after said sale.

To which action of the court in overruling their motion for continuance, and renewing the Order naming a day for the sale of said lands, defendants excepted at the time.

STATE OF ARKANSAS, *St. Francis County:*

I, George B. Mallory, Clerk of the Circuit Court of St. Francis County, Arkansas, do hereby certify that the foregoing is a true, perfect, and complete copy of the Order made by said Circuit Court on March 20, 1902, as the same appears on Law Record K in my office.

Witness my hand and seal of office, this the 24th day of September, 1906.

[SEAL.] G. B. MALLORY, *Clerk.*

Endorsed: No. 105. In U. S. Circuit Court, Helena, Arkansas. Sallie J. McDaniel, *et al., vs.* George M. Traylor, *et al.* Plaintiffs' Proof. Certified copy of Renewal Order of Sale of H. Evans' lands made by Circuit Court, March 20, 1902. Filed October 1, 1906. Emerson R. Crum, Clerk.

50 In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

105.

SALLIE J. MCDANIEL ET AL.
vs.
GEORGE M. TRAYLOR ET AL.

Notice.

To the said defendants, George M. Traylor *et al.*, and to their attorneys, Messrs. N. W. Norton and R. J. Williams:

You are hereby notified that the depositions of witnesses to be read in evidence on behalf of the plaintiff will be taken at the office of the Clerk of the Circuit Court in Town of Forrest City, County of St. Francis, State of Arkansas, on the 1st day of October, 1906, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon; and that the taking of said depositions, if not com

pleted on said day, will be continued from day to day until completed, at the same place and between the same hours.

G. B. WEBSTER,
J. R. BEASLEY,
Solicitors for Plaintiffs.

Sept. 29, 1906.

Endorsed: No. 105. In U. S. Circuit Court, Helena, Arkansas. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Notice. of the taking of depositions for plaintiffs. I have a copy. 9/29/06. N. W. Norton, of Counsel for D'f'ts. Filed October 5, 1906. Emerson R. Crum, Clerk.

51 The deposition of T. C. MERWIN, taken on the 1st day of October, 1906, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, at the office of the Clerk of the Chancery Court of St. Francis County, Arkansas, in the Court house at Forrest City, to be read in evidence in behalf of the complainants in the cause pending in the United States Circuit Court at Helena, Arkansas, wherein Sallie J. McDaniel, *et al.* are complainants and George M. Traylor, *et al.* are defendants.

Said witness, being first duly sworn, testified as follows:

Q. What is your name, age, place of residence, and occupation?

A. T. C. Merwin, 60, reside at Forrest City and am clerk of the County and Probate Courts of St. Francis County, Arkansas.

Q. How long have you been clerk?

A. Ever since 1900, and was deputy clerk from 1894 to 1900.

Q. What position did you fill just before you became clerk of the County and Probate Court?

A. Deputy Clerk as above stated.

Q. How many years did you fill the office of deputy clerk in this county?

A. About 7 years.

Q. Were you acquainted with James Evans, the half-brother of Hiram Evans' other children?

A. Yes.

Q. What kind of a man was he?

A. He was an uneducated man.

Q. How long had you known him before his father died in April, 1891?

A. Ever since during the war between the North and South.

Q. Did Jim ever live in Forrest City before his father's death?

A. I don't know.

Q. What was his occupation?

A. He kept a drug store in Forrest City 1893 and 1894 when I came here—before that he was a farmer.

52 Q. Did James Evans have any property listed on the tax books of this county at the time his father died?

A. I don't know that was before I came here.

Q. When Jim was appointed as administrator of his father's estate in April, 1891, was he married or not?

A. I was not acquainted with his family prior to 1894.

Q. Did he move to Forrest City after he was appointed as Administrator?

A. I don't know but he was living here in 1893-4 and until his death.

Q. Please examine the Probate Court record and state for what amount of money he was authorized to rent out the lands of H. Evans' estate for the year 1896?

A. $925.00.

Q. It seems that administrator James Evans had control of said lands for six years, from 1891 to 1896 inclusive; that the lands laid idle for two years; and that the rent of one year was used for repairs. Now, do you know what rent he got for each of the other three years?

A. No.

Q. Was Administrator James Evans ever authorized by order of the Probate Court to run a drug store in Forrest City, Ark.?

A. Not that I know of, I have never seen it.

Q. Did he ever pay off any of the claims against said estate which were allowed by the Probate Court?

A. Not that I know of—

Q. Did he ever turn over to his successor any of the personal assets of said estate which went into his hands?

A. Not that I ever heard of.

Q. Did Adm'r James Evans ever make a settlement of his accounts as Administrator of said estate which was confirmed by the Probate Court?

A. No.

Q. Please state in what month and year James Evans died.

A. Dec. 1896.

53 Q. Please examine the records and state when his successor, Henry P. Gorman, was appointed; when said Gorman filed his first settlement; what rent he said he had received for the land for the years 1897 and 1898; and what personal property of said estate he said had come into his hands.

A. He was appointed May 28, 1897. 1st settlement filed Jan'y 17, 1899. He said he received $800.00 rent for 1897 and same for 1898. He reports said rents as all the personal property of any description that came to his hands.

Q. Please look at the settlements of said H. P. Gorman, Adm'r in Suc. of H. Evans' estate, and state what rent the lands brought for each of the years 1899, 1900, 1901 and 1902.

A. For 1899—$800.00, for 1900—$800.00, for 1901—$950.00 for 1902—$975.00.

T. C. MERWIN.

(The further taking of this deposition is continued by consent and agreement of the attorneys for the parties until next Wednesday at 3 o'clock p. m. This Oct. 1, 1906.

G. B. MALLORY. *Clerk.*

The defendants waive cross examination, and except to the relevancy and competency of the foregoing statements as proof in this case.

G. B. MALLORY. *Clerk.*

10/3/06.

STATE OF ARKANSAS, *St. Francis County:*

I, George B. Mallory, Clerk of the Circuit Court of St. Francis County, Arkansas, do hereby certify that the foregoing deposition of T. C. Merwin was taken before me, and was read to and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said Merwin having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth and nothing but the truth, and that his statement was reduced to writing by him in my presence, and in the presence of the attorney for the plaintiffs.

54

Given under my hand and seal of office this the 3d day of October 1906.

[SEAL.] G. B. MALLORY, *Clerk.*

Clerk's fees $2.00.

Endorsed: No. 105. In U. S. Circuit Court, Helena, Arkansas. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Plaintiff's Proof. Deposition of T. C. Merwin. Filed October 5, 1906. Emerson R. Crum, Clerk.

Third Day of October Term, 1906, Tuesday, October 9, 1906.

105.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

This cause came on for hearing at the present term of court, and the court finds after hearing the proof that there is a total failure to establish the fact alleged in the bill, that the said defendants or any two or more of them, whose claims in the aggregate exceeded the sum of two thousand dollars, exclusive of interest, conspired and confederated together in procuring the allowance of said claims, and therefore that the court is without jurisdiction.

55

It is therefore ordered, considered and decreed by the court that the said bill be dismissed for want of jurisdiction.

JACOB TRIEBER, *Judge.*

Fourth Day of October Term, 1906, Wednesday, October 10, 1906.

105.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

On this day comes the complainants, by their solicitors, Messrs. G. B. Webster and J. R. Beasley, and file their motion, and affidavit in support thereon, to set aside the order dismissing complainant's bill for want of jurisdiction, which motion coming on for hearing and the court being well advised in the premises, doth overrule the same.

In the United States Circuit Court, Helena, Arkansas.

SALLIE J. MCDANIEL ET AL.
vs.
GEORGE M. TRAYLOR ET AL.

Motion.

Come the complainants, Sallie J. McDaniel, *et al.*, and move the court to set aside the order made on the 9th day of October, 1906, dismissing complainants' bill for want of jurisdiction, and to hear and determine the case upon its merits.

G. B. WEBSTER,
J. R. BEASLEY,
Solicitors for Complainants.

56 Endorsed: No. 105. In U. S. Circuit Court. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Motion. Filed October 10, 1906. Emerson R. Crum, Clerk.

STATE OF ARKANSAS, *Phillips County:*

Comes the affiant, John R. Beasley, who says that he is one of the attorneys for complainants in the case of Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.*, pending in the United States Circuit Court at Helena, Arkansas; that this suit has been to the United States Supreme Court on a demurrer to jurisdiction, and said Supreme Court on Feb. 20, 1905, ordered the demurrer to be overruled and said among other things: "We are of the opinion that within the meaning of the Judiciary Act of 1887, 1888, the jurisdiction of the Circuit Court in this case depended upon the value in dispute measured by the aggregate amount of the claims of the defendants," which were about $3000.00 without interest. Affiant further states that there is nothing in the bill which indicates that

it intended to charge or convey the idea that the defendants, about thirty in number, living in different states, and with claims ranging from $4 upward, were acquainted with each other or got together at some convenient place and concocted a scheme to get their claims allowed in a body by the Probate Court of St. Francis County, Ark. That the confederation and conspiracy alleged repeatedly in the bill was by said defendants with John Evans and Adm'r James Evans, an allegation which is sustained by the proof in the record, and which should receive a reasonable construction. That upon the case made by the bill the Supreme Court said complainants were entitled to a decree in their favor, and affiant states, with all proper respect and courtesy, that he verily believes the United States Circuit Court at Helena, Ark., misunderstood said decision and the plead-
57 ings and proof in the case when it dismissed the bill a second time for want of jurisdiction on the ground stated in the decree made on Oct. 9, 1906.

JOHN R. BEASLEY.

Subscribed and sworn to before me this the 10th day of October, 1906.

[SEAL.] EMERSON R. CRUM, *Clerk.*

Endorsed: No. 105. In U. S. Circuit Court. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* Affidavit. Filed October 10, 1906. Emerson R. Crum, Clerk.

FORREST CITY, ARK., *Oct.* 11, 1906.

Judge Jacob Trieber, Helena, Ark.

DEAR SIR: Please instruct the clerk to note on the record our exception to the action of the court in dismissing the bill in No. 105 and in overruling our motion to set aside said order.

Yours truly,

J. R. BEASLEY.

Endorsed: No. 105. Sallie J. McDaniel, *et al. vs.* Geo. M. Traylor, *et al* Exceptions to court dismissing bill. Filed October 12, 1906. Emerson R. Crum, Clerk.

58 In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

No. 105.

SALLIE J. MCDANIEL ET AL., Complainants,

vs.

GEORGE M. TRAYLOR ET AL., Defendants.

The complainants in the above entitled cause, believing themselves aggrieved by the decree dismissing their bill for want of jurisdiction, heretofore rendered and entered of record therein at the Oc-

tober Term, 1906, of said Court, do hereby appeal from the said order and decree to the Supreme Court of the United States, for the reasons set out in the Assignment of Errors hereto attached, and pray that their appeal may be allowed, and that a transcript of the record and proceedings upon which said decree was entered, duly authenticated, may be sent to the Supreme Court.

G. B. WEBSTER,
J. R. BEASLEY,
Solicitors for Complainants.

Appeal granted upon execution of a bond in the sum of $250.00 conditioned as required by law, returnable in 30 days.

JACOB TRIEBER,
U. S. Dist. Judge, East. Dist. of Ark.

Endorsed: No. 105. In U. S. Circuit Court, Helena, Arkansas. Sallie J. McDaniel, *et al.*, Complainants *vs.* George M. Traylor, *et al.* Defendants. Petition for Appeal. Filed April 5, 1907. Emerson R. Crum, Clerk.

59 APRIL 5TH, 1907.

105.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

On this day come the complainants, by their solicitors, Messrs. G. B. Webster and J. R. Beasley, and file their petition for appeal, assignment of errors, and bond on appeal, in this cause, which said petition for appeal is endorsed as follows: "Appeal granted upon execution of a bond in the sum of $250.00 conditioned as required by law, returnable in 30 days.

JACOB TRIEBER,
U. S. District Judge, East. Dist. of Ark.

60 In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

No. 105.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

Assignment of Errors.

Now come the complainants in the above entitled cause by their solicitors and say that the decree heretofore rendered herein on the 9th day of October, 1906, dismissing their bill, is erroneous and

against their just rights, and that the Circuit Court erred in its said decision and decree for the following reasons, to-wit:

First. It was error in the Circuit Court in the light of the opinion of the Supreme Court in this case (196 U. S. 415) to deny its jurisdiction to dismiss the bill for want of jurisdiction.

Second. It was error in the Circuit Court to find and hold that it was essential to maintain the jurisdiction: that any two or more of the defendants conspired together to procure the allowance of their claims; because an actual conspiracy was not necessary where the action and conduct of the defendants acting by and through their attorneys with the attorney of the administrator were such as to procure the fraudulent allowance of the claims.

Third. Because the true test of the jurisdiction in a proceeding of this nature is the value of the property involved and not the amount of the claim which is attacked, and the Circuit Court erred in not so finding and holding.

Wherefore, for these reasons and causes apparent upon the face of the record herein, the said complainants pray that the said errors may be corrected and the decree rendered and entered as aforesaid by the said Circuit Court be set aside and for naught held and esteemed and that the said Circuit Court may be directed by the Honorable the Supreme Court of the United States to take jurisdiction of the said cause and proceed to hear the same upon its merits and grant to the complainants the relief prayed in their bill, and to proceed otherwise as equity and justice may require.

61

G. B. WEBSTER,
J. R. BEASLEY,
Solicitors for Complainants.

Endorsed: No. 105. In U. S. Circuit Court, Helena, Arkansas. Sallie J. McDaniel, *et al.*, Complainants, *vs.* George B. Traylor, *et al.*, Defendants. Petition for Appeal and Assignment of Errors. Filed April 5, 1907. Emerson R. Crum, Clerk.

62 Know all men by these presents, that we, Sallie J. McDaniel, Mary E. Jackson, and Nannie E. Hoshall, principals, and J. B. Hodges and T. J. Davis, sureties, are held and firmly bound unto George M. Traylor, John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Bros. Drug Company, Liquid Carbonic Acid Manufacturing Company, the Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, Administrator of estate of John W. Andrews, deceased, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, Van Vleet-Mansfield Drug Company, Claus Shear Company, Coco Cola Company, Alfred Wright, Meridian Silver Plate Company, and C. F. Simmons Medicine Company, in the full and just sum of ($250.00) two hundred and fifty dollars to be paid to them,

their heirs, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this the 19th day of March, in the year of our Lord one thousand nine hundred and seven.

Whereas lately at the October term, A. D. 1906, of the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas, in a suit pending in said court between Sallie J. McDaniel, Mary E. Jackson and Nannie A. Hoshall, plaintiffs, and George M. Traylor, John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Acid Manufacturing Co., the Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Administrator of estate of John W. Andrews, deceased, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet Mansfield Drug Co., Claus Shear Co., Coco-
63 Cola Co., Alfred Wright, Meridian Silver Plate Co., and C. F. Simmons Medicine Co., defendants, judgment was rendered against the said plaintiffs, Sallie J. McDaniel, Mary E. Jackson, and Nannie A. Hoshall, and the said plaintiffs have taken an appeal to the United States Supreme Court to reverse the judgment in the aforesaid suit and obtained a citation directed to the said defendants, George M. Traylor, *et al.*, citing and admonishing them to be and appear in the United States Supreme Court at the City of Washington, in the District of Columbia, thirty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Sallie J. McDaniel, Mary E. Jackson, and Nannie A. Hoshall, shall prosecute said appeal to effect, and answer all costs if they fail to make good their appeal, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

SALLIE J. McDANIEL. [SEAL.]
MARY E. JACKSON. [SEAL.]
NANNIE A. HOSHALL. [SEAL.]
J. B. HODGES. [SEAL.]
T. J. DAVIS. [SEAL.]

Approved.
JACOB TRIEBER, *Judge.*

64 STATE OF ARKANSAS, *St. Francis County, ss:*

I hereby certify that the foregoing is a good bond for $250.00. This March 20, 1907.

G. B. MALLORY,
Clerk of St. Francis Circuit and Chancery Courts.

Endorsed: No. 105. In U. S. Circuit Court, Helena, Arkansas. Sallie J. McDaniel *et al.*, *vs.* George M. Traylor, *et al.* Appeal bond. Filed April 5, 1907. Emerson R. Crum, Clerk.

65 United States of America to George M. T-aylor, John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, Administrator; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, Van-Vleet-Mansfield Drug Company, Claus-Shear Company, Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court thirty days from and after the day this citation bears date, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Arkansas, wherein Sallie J. McDaniel, Nannie A. Hoshall and Mary E. Jackson are Appellants and you are appellees, to show cause, if any there be, why the judgment rendered against the said Appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Jacob Trieber, Judge of the District Court of the United States for the Eastern District of Arkansas, sitting as Circuit Judge.

This the 3rd day of April in the year of our Lord one thousand nine hundred and seven.

JACOB TRIEBER,
United States District Judge for the Eastern District of Arkansas, sitting as Circuit Judge.

Service waived April 3rd, 1907.

N. W. NORTON,
Counsel for Appellee.

[Endorsed:] #105. In U. S. Circuit Court, Helena, Arkansas. Sallie J. McDaniel, *et al.* Complainants, *vs.* George M. Traylor, *et al.*, Defendants. Citation. Filed Apr. 5, 1907. Emerson R. Crum, Clerk Citation.

66 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas:

I, Emerson R. Crum, Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern District of Arkansas, do hereby certify that the above and foregoing sixty-five typewritten pages is a true and compared copy of the record and proceedings since the filing of the mandate from U. S. Supreme Court in the cause of Mrs. Sallie J. McDaniel, *et al.*, are complain-

ants, and George M. Traylor, *et al.*, are defendants, as the same remains of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, at office in the City of Helena, this the 19th day of April, A. D. 1907.

[Seal of the United States Circuit Court. Eastern Division of the Eastern Judicial District of Arkansas.]

EMERSON R. CRUM, *Clerk*,
By J. C. CONNOLLY, *D. C.*

Endorsed on cover: File No. 20,687. E. Arkansas C. C. U. S. Term No. 295. Sallie J. McDaniel, Nannie A. Hoshall, and Mary E. Jackson, appellants, *vs.* George M. Traylor, John F. Stratton, John F. Smith *et al.* Filed May 1st, 1907. File No. 20,687.

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JAMES H. McKENN
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

SALLIE J. McDANIEL ET AL.,
Appellants,

vs.

GEORGE M. TRAYLOR ET AL.,
Appellees.

No. [illegible]

BRIEF FOR APPELLANTS.

G. B. WEBSTER,
J. R. BEASLEY,
Counsel for Appellants.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

SALLIE J. McDANIEL ET AL.,
Appellants,

vs.

GEORGE M. TRAYLOR ET AL.,
Appellees.

No. 295

STATEMENT.

This case appears for the second time in this court. As on the former occasion it is here upon a question of jurisdiction. The result of the former appeal is reported in 196 U. S. 415.

The original bill alleged that Hiram Evans, the ancestor of the complainants (who are again the appellants) died on April 13, 1891, possessed of an estate in real and personal property of the value of about $30,000, [redacted]; that among the assets of said estate was a certain drug store in Forrest City, Arkansas, which the administrator, James Evans, sold and delivered to John Evans, on or about the 1st day of May, 1891; that the defendants had claims against said drugstore, which were contracted by John Evans, while he owned and was operating it, and that he becoming insolvent, the defendants undertook to procure the allowance of these debts of John Evans against his farther's estate by concealment of these facts from the Probate Court and by fraudulently alleging and claiming the debts to be expenses of administration. It was further charged that this purpose was accomplished by concerted action between the several claimants and the administrator. It was averred that the judgments had become final before their invalidity was discovered by the complainants, so that no relief was possible by appeal, or similar proceeding; that the several claims so allowed, while in fact invalid, were at law liens upon the real estate inherited by the complainants from their father, which property was alleged to be of the value of $16,000.00. The prayer of the bill was that the judgment of the Probate Court allowing these claims be set aside and be decreed not to be valid or lawful liens against the real estate or upon the interest of the several complainants therein, and that the defendants be enjoined and restrained from asserting or enforcing the said judgments or taking any manner of benefit or profit thereunder. (Tr. 2.)

After the return of the case to the United States Circuit Court certain of the defendants answered

denying all the allegations of the bill and setting up a plea of *res adjudicata.* (Tr. 43.)

Issue having been joined the parties proceeded to the taking of proof, and, while John Evans was testifying in a similar case, it was discovered that the drugstore had never in fact belonged to the complainants' ancestor, but every since 1885 it had been the property of the firm of Marcus Collins & John Evans. At this the complainants procured leave to, and did file an amended bill putting in this allegation in place of the statement in the original bill. (Tr. 46.)

The cause at length proceeded to a hearing upon the proof taken and at the close of complainants' evidence the court made an order dismissing the bill for want of jurisdiction, upon the ground that the proof failed to show any conspiracy or federation in procuring the allowance between any two or more of the several complainants. (Tr. 73.)

The complainants exhibited in evidence at the hearing a certified list of claims allowed against the estate of Hiram Evans; a certified copy of a judgment for $500.00 in favor of Marcus Collins against John J. Evans, in the Circuit Court of St. Francis County, rendered April 23, 1890, (Tr. 52), and a certified copy of the mandate, judgment, and opinion of the Supreme Court of Arkansas, rendered March 1st. 1890 in the case of *Feucht vs. John J. Evans, et al.*, in which case N. W. Norton was attorney for Feucht et al., (See 52 Ark. 556), and R. J. Williams was one of the attorneys of record for John J. Evans et al.

The first mentioned document shows that all of the claims attacked in this proceeding were classed as expenses of administration—those of N. W. Wilkerson and Company in the sum of $1061.67 and $3353.33, and that of M. A. Houston in the sum of $250.00, not being involved in the present proceeding.

The complainants also offered the deposition of Marcus Collins, (Tr. 56), who testified that in 1884 he, N. W. Norton and one Hamilton composed the firm which owned the drug store in question. In Jan. or Feb., 1885 he sold his third interest to John Evans, and thereafter purchased the third interest of Hamilton, which interest he later sold to John Evans for $500.00, and took his note for the money. (Tr.57.) After the purchase of Hamilton's interest by Collins the business was conducted in the name of Collins and Evans.

It seems that Collins made a verbal agreement with Norton in the summer of 1885 for the purchase of the latter's interest in the drug store and was subsequently compelled to pay for it. (Tr. 57 and 59). And concerning this third interest which Collins got from Norton, he (Collins) swears that he never sold it to anybody or gave it to anybody. (Tr. 57.) When John Evans bought his second one-third interest in the drug store he paid Collins for it with a note for $500.00, dated October, 1885, and payable October, 1886, upon which Collins in 1890 recovered judgment. Execution was issued on said judgment Jan. 2nd, 1892, and returned Feb. 29, 1892 satisfied in full. (Tr. 52.)

The deposition of James Evans, who was the administrator, which had been taken for use in another case involving the same drug store, was also offered by the complainants. (Tr. 61.) He testified that the claims of Wilkerson & Company were presented to him by R. J. Williams, who was his attorney, as well as the attorney for John Evans and the attorney for the Wilkerson firm, although his relations with the latter were unknown to the administrator. (Tr. 62.) When asked why he allowed the debts which had been contracted by John Evans when he was owning and running the drug store, as claims against the

estate, he replied that his attorney, Williams, *advised him to allow them all*, and he therefore thought it was right to do so. (Tr. 64.)

The deposition of T. C. Merwin, clerk of the Probate Court of St. Francis County, (Tr. 71), was to the effect that James Evans, the administrator, was never authorized by that court to run a drug store and that he never made a settlement which was confirmed by the Probate Court.

The defendants offered no testimony whatever and upon the record thus made the Circuit court, as already stated, dismissed the complainants' bill for want of jurisdiction.

The errors assigned on this record and relied upon in this Court are as follows:—

First:—It was error on the part of the Circuit Court, under the opinion on the former appeal of this case, to deny jurisdiction and to dismiss the bill for want of jurisdiction.

Second:—It was error in the Circuit Court to find and hold that in order to maintain the jurisdiction any two or more of the defendants must have conspired together to procure the allowance of their claims, because an actual conspiracy was not necessary where the action and conduct of the defendants, acting by and through their attorneys, with the attorney of the administrator, were such as to procure the fraudlent allowance of the claims.

Third:—Because the true test of the jurisdiction in a proceeding of this kind is the value of the property upon which the inequitable liens rest, and not the amount of such liens, and the circuit court erred in not so finding and holding.

BRIEF.

I.

The Circuit Court erred in finding and holding that it had no jurisdiction because the complainants failed to prove any joint act of two or more of the defendants tending to procure the fraudulent allowance of their claims.

It was error because:

(a) The gravamen of the charge in the bill was that the defendants conspired with the administrator and thereby procured the allowances which otherwise would not have been made.

(b) The evidence was that Williams, as attorney for the administrator, advised the latter to allow all the claims while he was, unbeknown to the administrator, acting as attorney for one of the claimants. (*Transcript* p. 64.) The present record discloses Williams as the attorney for all of those claimants, including that one which he then secretly represented. (*Transcript* pp. 42, 46, 48.) These facts justify the conclusion that in procuring the administrator to allow as expenses of administration what were not valid claims of any nature, he was acting for all whose claims were so allowed. If he was, then his act was their joint act because done in their business and for their benefit.

Bethel Church v. Carmack, 2 Md. Ch., 143;
Chambers v. Hodges, 23 Tex., 104;
I. P. & C. R. R. v. Tyng, 63 N. Y., 653;
Griswold v. Gebbie, 126 Pa. St., 353;
Craig v. Ward, 2 Keyes, 287.

If his act was their act, then their wrong in procuring the illegal allowance while concealing from the probate court the fact that the claims were the debts of John Evans and not "expenses of administration," and the wrong of the administrator in consenting to and permitting the allowances when he necessarily knew that he had not incurred them in the performance of his trust, combined to bring the result complained of in the bill, and the concerted action necessary to create jurisdiction was established.

(c) The law only requires the highest quality of proof possible. Where the fact to be proved rests in the knowledge of the other party and he stands silent when evidence is given of other facts from which the ultimate fact to be proved may reasonably be inferred, it is to be considered as sufficiently proven.

Greenleaf, Evidence (16th Ed.) Sec. 79;
1 Starkie, Evidence, 54;
Lehman v. Knapp, 48 La. An., 1148 (20 So. 674);
Commonwealth v. Webster, 5 Cush., 316, *l. c.*
Heath v. Waters, 40 Mich., 457;
Conn. M. L. Ins. Co. v. Smith, 117 Mo., 261;
Mabary v. McClurg, 74 Mo., 575;
Runkle v. Burnham, 153 U. S., 225 *l. c.*
Choctaw & M. R. Co. v. Newton, 140 Fed., 238, *l. c.*
Gulf C. & S. Ry. v. Ellis, 54 Fed., 481;
Pac. C. S. Co. v. Bancroft W. Co., 94 Fed., 180;
Kirby v. Talmadge, 160 U. S., 379.

Here positive knowledge whether or not there was a conspiracy to which they were parties, and which resulted in the allowance of these claims alleged to be fraudulent, was in the hands of these defendants. They, better than any one else, for *the administrator is*

dead, knew the truth, and they were in court to speak. Yet in the face of the charges of the bill and the proof of facts raising a strong presumption of concerted action between them and the administrator, their voices are not heard in denial. When it is considered that fraudulent conduct such as is here charged is not plotted in public, nor enacted upon the house tops, but on the contrary is conceived in secret and effectuated in quietude it is at once apparent that the direct, positive and convincing proof ordinarily required is impossible, and that all due regard for the rights of these silent defendants does not demand it in the circumstances. Especially is it so under the rule that this court will look to all of the facts in determining the question of jurisdiction, the lack of which should appear with full certainty before a denial of jurisdiction will be affirmed.

Wetmore v. Rymer, 169 U. S., 115;
Put in Bay Co. v. Ryan, 181 U. S., 431;
Perry Co. v. Koesters, 152 Fed., 967;
McCarthy v. Am. T. Co., 143 Fed., 680, *l. c.*

Cicero said that to a wise judge proofs by reasoning are of more value than witnesses. Here they are at least as good when the witnesses who might controvert them do not speak.

> "It is seldom that a fraud or conspiracy to cheat can be proved in any other way than by circumstantial evidence, as knaves have usually sufficient cunning to have no witnesses present who can testify to their fraudulent contrivance."
>
> *Thompson v. Bowie,* 4 Wall., 473.

The rule that fraud is never presumed merely declares a principle of administration that the burden of proof as to the existence of a fact is upon the party alleging it.

16 Cyc., 1082.

But where one who has the burden of proof shows a state of facts raising a presumption in his favor, he establishes a *prima facie* case, and the burden, that is to say the duty of producing sufficient facts to satisfy the court or jury, shifts to the other party.

16 Cyc., 933-934.

In this connection regard must be had to the distinction between the differing meanings of the phrase "burden of proof." In one sense it imports the necessity of establishing certain facts as the prerequisite of the law's action, and it is in this sense that it is used in general statements, common among both the text writers and the judicial authors, to the effect that the burden of proof never shifts. In another sense it denotes that obligation which rests upon a litigant to show facts sufficient to satisfy the mind of the trier of facts, or, in other words, to create a *prima facie,* and this is the sense in which the term is here used.

Carver v. Carver, 97 Ind., 497, 510;
16 Cyc., 926.

II.

In a case of this nature the value of the property upon which the invalid lien rests rather than the amount involved in the lien, is the true test of jurisdiction.

It is beyond cavil that the judgment of the probate court in allowing these claims is a cloud upon the title of the complainants, and an impairment of their right to enjoy their interest therein, which, while valid at law is, by extrinsic facts, void.

> "Thus a suit to quiet title to parcels of real estate or to remove a cloud therefrom by which their use and enjoyment by the owner are impaired, is brought within the cognizance of the

court under the statute only by the value of the property affected."

Smith v. Adams, 130 U. S., 175, *l. c.*
Parker v. Morrill, 106 U. S., 1.

In the latter case there was a cloud upon the title to a portion of the lands and the value of that portion was held to be the amount in controversy. Although the appeal was dismissed it was solely on account of the fact that the record failed to disclose the value of the lands.

Both these cases were cited and followed by the Circuit Court in the Western District of Texas in a suit to set aside fraudulent conveyances as a cloud upon the title.

Simon v. House, 46 Fed., 317.

"In a suit to quiet title it is not the value of the defendant's claim that constitutes the amount in controversy; it is the value of the whole of the real estate to which the claim extends."

Woodside v. Ciceroni, 93 Fed., 1.

In that case Judge Gilbert pointed out the reason for the rule and showed that the rights of the complainants were not confined to any definite portion of the real estate and that the claim of the defendant affected the right of the complainant to the enjoyment of the whole of his estate; or, in other words, that the lien affected every moiety of the entire estate and impaired the right of the complainant to the enjoyment of every portion of it.

Smith v. Adams was also followed in *Cowell v. City Water Supply Company,* 121 Fed., 53, where the plaintiff was the owner of but one bond of the value of $1000.00. Jurisdiction was denied there because he was the owner only of a separable interest amounting to less than the jurisdictional sum. The principle now contended for was fully recognized but held inapplicable under the facts of the case.

In the state courts, by the weight of authority, the rule is the same.

Fuller v. Grand Rapids, 40 Mich., 395;
Scripture v. Johnson, 3 Conn., 211;
Simon v. Richard, 42 La. An., 842;
Kahn v. Kerngold, 80 Va., 342;
Ayers v. Blair, 26 W. Va., 558.

ARGUMENT.

It will be observed from the ruling of the court below that the trial judge seems to have been of opinion that the complainants, in order to establish the jurisdiction, were obliged to prove that two or more of the defendants whose demands are here attacked, got together and agreed upon a joint course of action, although the bill charged in the usual words of the conspiracy clause that the defendants not only conspired together but also conspired with the administrator. The specific and material charge is that there was an agreement or understanding between the defendants on the one hand and the administrator on the other. We now contend that parties may conspire through their attorneys as well as in person and that where an attorney, representing claimants and the administrator, procures the latter to allow the claims when knowledge of the circumstances on the part of both would make it the duty of the one to advise against allowance and of the other not to allow them, the fraudulent conduct of the claimants acting through the same agent, sufficiently establishes the conspiracy charge.

The present record discloses without contradiction that R. J. Williams was the attorney of Wilkerson & Company while acting as attorney for the administrator and that it was upon his advice alone that the administrator allowed the defendants' claims.

The record is replete with proof that the same Williams is now attorney for the several defendants in this case. His name is signed to their answer. (Transcript, p. 46.) He appeared and made argument

for these defendants on the demurrer to the juirsdiction (Trancsript, p. 32.) And he appeared in their behalf to procure the setting aside of a decree *pro confesso.* (Transcript p. 42.) Our contention is that in these circumstances he will be presumed to have been the attorney for these same claimants at the time they proved up their claims, especially since the administrator says that he advised the allowance of them in favor of all of the defendants at the same time.

From time immemorial courts of equity have recognized the fact that fraud is conceived and executed in secret and that its perpetrator is generally at pains to see that the evidence of it is not left open. As this court said in *Thompson v. Bowie,* 4 Wall., 473:

> "It is seldom that a fraud or conspiracy to cheat can be proved in any other way than by circumstantial evidence, as knaves have usually sufficient cunning to have no witnesses present who can testify to their fraudulent contrivance."

And again in *Rea v. Missouri,* 17 Wall., 543:

> "To establish fraud it is not necessary to prove it by direct and positive evidence. Circumstantial evidence is not only sufficient but in most cases it is the only proof that can be adduced."

If Williams was representing one of the claimants and at the same time advising the administrator, and by virtue of his dual position violated his duty to one for the benefit of the other, and if he is now appearing to defend the allowance in favor of that one and also appearing for the others to the same end, it is a strong presumption that he represented them also at the time the allowances were made. Especially is this true when he and they remained silent at the bar of the lower court in the face of the charges set forth in the bill. Had the conspiracy charge been unfound-

ed his natural course would have been to deny under oath that he acted for the other defendants in procuring judgment in their favor in the probate court, and they ordinarily would also have denied. Presumptions are, of course, but those inferences which the law draws in the absence of the facts, but all things will be presumed against the man who remains silent when he should speak. These facts, we think, sufficiently supply that proof which this court, in its opinion on the former case, said was necessary to maintain the jurisdiction. The words used in the opinion are these:—"If the plaintiffs do not prove such a combination and conspiracy in respect at least of so many of the specific claims as in the aggregate will be of the required amount, then their suit must fail for want of jurisdiction in the circuit court." By the expression, "such a combination and conspiracy" we understand the court to have meant such concerted action as resulted in a fraud upon the complainants, not that they were obliged to prove that the defendants held a mass-meeting at some place and adopted resolutions to defraud the estate. If Williams was representing them and acted fraudulently in procuring these allowances the fraud was the act of each and all of the persons for whom he acted, quite as much as if it had been done by each and all of them in person.

This conspiracy charge is to be considered in another light:—In the modern equity pleading it is regarded as an allegation more of form than of substance, and in Story on Equity Pleading, pp. 24-25, the learned author says that the confederation charge usually inserted in bills is ordinarily treated as surplusage, and quotes the assertion of Lord Redsdale that an answer to a charge of unlawful combination cannot be compelled. While it is true that in this case the conspiracy charge is of more than ordinary impor-

tance, the point we now urge is that the complainants are not to be held to a strict proof of it, but may be considered to have established it, so far as is necessary, by such proof as was given at the trial of this case in the circuit court.

If we are correct in the assertion that Williams' conduct in procuring the administrator to allow the demand of one of the defendants whom he then secretly represented, coupled with the fact that he is now (when the need of secrecy no longer exists) openly the attorney of all of them, raises the presumption that he was representing all of them when he poisoned the ear of the administrator with his unfaithful advice, then it must be held, for the jurisdictional purpose at least, that both the iniquitous purpose and the concerted action of the several defendants were established. He knew the truth as to the origin and nature of the claims because he was the real debtor's attorney, and knew that they were not expenses of administration because he was counsel for the administrator, and yet with this knowledge he violated his duty and prostituted his office by advising the administrator to allow them against the estate he was bound to protect. It is not likely that he would have voluntarily and gratuitously done such a thing. The ordinary fear of consequences would alone have deterred him, and the common knowledge of mankind would justify the conclusion that he, like his prototype of old, "covenanted for money." So we say that it was the voice of Jacob but the hand of Esau that brought about the fraudulent judgment of allowance against which the complainants here protest. With all this knowledge in his breast and with the consent of the administrator procured by his own infidelity, concealing what if known would have defeated the claims, he went into the probate court and secured the allowance (at least

of one claim) as Ananias "went in before the apostles and lied to the Holy Ghost." Can it be said in the face of all this that he was acting for but one claimant? He was in court, active in the defense of this case, and so were the several defendants, who having gathered the fruits of his unlawful traffic would now repudiate his agency in that gain, but neither he nor they gave tsetimony although they and each of them knew in their hearts whether or not there was a conspiracy or concerted action and could have supplied the positive proof. This, we claim, so strengthened the presumption of Williams' agency for all of the defendants as to transform it into a *prima facie* case in which a denial of jurisdiction was error, even under the narrowest possible construction of the opinion on the former appeal.

Against this our opponents will doubtless say that fraud is never presumed, but must be proved by clear and convincing evidence, all of which is true as a general rule. But that rule, which is merely administrative, means only that one who alleges an affirmative fact has the burden of proving it, and does not militate in the least against another equally well established rule—that where the party having the burden shows a state of facts which raise a presumption in his favor, he establishes a *prima facie* case and the burden, regarded as the duty of producing sufficient evidence to satisfy the trier of facts, shifts to the other party. Of course, the burden of proof, when the term is used to signify the obligation to show the existence of the facts upon which the relief demanded is necessarily predicated, never shifts, and citation of authority on that proposition is not difficult, but the burden of evidence, as it is perhaps better called when used in the sense of the duty of satisfying the court or jury, does, whenever that one who must fail in the absence of all evidence, establishes a presumption in his favor.

The defendants, silent in the face of facts so strongly indicating an understanding, if not an active conspiracy, are not unjustly dealt with if from those facts is presumed the existence of that which it was in their power to disprove were it not truth, because common experience teaches that persons standing in danger do not hold their peace unless to speak would be to condemn themselves; and courts ought not to pretend to be more ignorant than the rest of mankind. The books are full of cases where fraudulent purpose has been presumed from less suggestive circumstances than those here presented. Some of them are cited in the brief proper, and many more might be collected did time or space permit. The whole question then, if due regard is to be given previous expressions of this court, resolves itself into this: did the facts shown by the complainants—the harlotry of Williams in his professional relations to the estate, the claimants and the real debtor, his agency then for one of the fraudulent claimants, his concealment from the court of the known invalidity of the claims, and his agency now for all of the defendants who profited by the fraud—did the sum total of these create a condition in which the defendants were called upon to speak and tell what they must have known or suffer the conclusion that what they disclosed would have confirmed their adversaries' contention? If so, a *prima facie* case was made, the burden shifted, and the collusion was sufficiently established to sustain the jurisdiction.

We submit that the question must be answered in the affirmative. If there be doubt, it should be resolved in the appellant's favor, for they are now at the last door of hope. Should it be closed upon them they will lose the heritage for which they have fought so long and so bravely, and it will go to the payment of claims which, but for the fraud and concealment prac-

ticed in their very concoction, would never have gotten place upon the records of the probate court of St. Francis county. At the bar of this court, in the very sanctuary of the temple, stands urging that result the discredited and disloyal counselor who made it possible, and in his shadow, foul with the same stains, these appellees who repudiate him and yet demand the profits of his shame. That their voices will find no willing ears we can not doubt.

Respectfully submitted,

G. B. WEBSTER,
J. R. BEASLEY,
Counsel for Appellants.

Office Supreme Court, U. S.
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CLERK

Supreme Court of the United States

OCTOBER TERM, 1907.

No. 295. 70.

SALLIE J. McDANIEL, ET AL., APPELLANTS,

vs.

GEO. M. TRAYLOR, ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLEES.

E. W. NICHOLLS,
N. W. NORTON,
Counsel for Appellees.

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Supreme Court of the United States

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SALLIE J. McDANIEL, ET AL., APPELLANTS,

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLEES.

ARGUMENT.

There are three assignments of error.

The first is as follows:

"It was error in the Circuit Court in the light of the opinion of the Supreme Court in this case (196 U. S., 415) to deny its Jurisdiction (and ?) to dismiss the bill for want of Jurisdiction." (77.)

This is a general assignment, and raises no question.

The second assignment of error is as follows:

"It was error in the Circuit Court to find and hold that it was essential to maintain the jurisdiction, that any two or more of the defendants conspired to procure the allowance of their claims; because an actual conspiracy was not necessary where the action and conduct of the defendants acting by and through their attorneys with the attorney of the administrator, were such as to procure the fraudulent allowances of the claims." (77.)

The bill was held good by this Court on demurrer, because of the broad allegation of the joint action of the defendants, making the several judgments, according to the allegation, in effect but one act. This sweeping allegation of conspiracy was held to distinguish the case from all that had gone before, and to make a case of jurisdiction where otherwise there would have been none.

An allegation that saves a bill on demurrer, cannot be treated as unimportant when it comes to the proof.

This assignment of error is simply an insistence that it was error in the lower Court to follow the law of the case as laid down by this Court, where the following language was used on the vital point:

"If the plaintiffs do not prove such a combina-

tion and conspiracy in respect at least of so many of the specific claims as in the aggregate will be of the required amount, then their suit must fail for want of jurisdiction in the Circuit Court."

The third assignment of error is as follows:

"Because the true test of the jurisdiction in a preceeding of this nature is the value of the property involved and not the amount of the claim which is attacked, and the Circuit Court erred in not so finding and holding." (77.)

The opinion of this Court in this case is expressly to the contrary and in this language:

"Hence, as we have said, the value of the matter in dispute is the aggregate amount of the claims fraudulently procured by the defendants acting in combination, to be allowed in the Probate Court as claims against the state of Hiram Evans."

Had the value of the property furnished the criterion, the amount of the claims and allegations of combination and conspiracy would have been surplusage.

No assignment of error questions the correctness of the Courts finding of fact, and still, the case was disposed of on the facts.

As a case in this Court presents what is included in the assignments of error and no more,

appellees could safely rest upon what has been said.

But the sweeping and extravagant charges of fraud, and unprofessional conduct will justify the expenditure of a little time in showing that altogether different inferences can be drawn from the testimony, although it is the testimony of appellants only; and meager. As they made no effort to prove the essential allegations of combination and conspiracy, the point was never reached where proof of any character was necessary from appellees.

A portion of the answer of defendants is as follows:

"They admit that among the assets of the estate of Hiram Evans, a certain drug store came to the hand of the administrator, with fixtures, etc., thereto belonging, but they deny that said drug store was sold by said administrator to John Evans, and in this connection the defendants state the facts to be: That the said John Evans had for many years in the life-time of Hiram Evans, conducted said drug store business, and had charge thereof, and after the death of Hiram Evans sought to acquire it for himself, and with this end in view he was, by the administrator and with the consent of the heirs, including complainants herein, allow-

ed to continue in possession of said drug store with the understanding that it should become his property if he paid and satisfied the debts it owed at time of the death of Hiram Evans, and on no other condition.

That with the knowledge of said administrator, and the heirs of Hiram Evans, including plaintiffs, the said John Evans conducted said business in his own name, and thereby made the said drug store a basis of credit, and contracted thereon the debts of which the complainants complain.

These defendants admit that on and about the time alleged by complainants, the said John Evans delivered said drug store back to possession of James Evans, as administrator of the estate of Hiram Evans, and all that belonged therewith, and this was done because of the inability of the said John Evans to pay the debts of the drug store and acquire the property therein.

These defendants admit that John Evans was then wholly insolvent.

These defendants deny, that thereupon, or at any other time, they colluded and confederated with the said John Evans and James Evans, as administrator, to secure the payment of their demands against John Evans, out of the assets of Hiram

Evans, deceased, and they deny that so conspiring and confederating, they procured the said James Evans to illegally and fraudulently allow said claims against the estate of Hiram Evans; and they deny that said claims were fraudulently or collusively presented to the Probate Court of St. Francis County, Arkansas.

And in this connection the defendants state the facts to be, that when said administrator received the said drug store back from the said John Evans, upon the grounds that the title never passed to him, their claims for goods sold the said John Evans and with which the stock of said drug store was kept replenished, at once became equitable demands, against said estate, which the heirs, including complainants, were, and are estopped to deny, by reason of the fact that the possession and handling of said drug store by the said John Evans was with their knowledge and consent.

These defendants deny that in presenting said claims to the Probate Court, there was any concealment of the fact that the goods had been sold to John Evans, but on the contrary the sales to John Evans and the circumstances thereof, and the retaking of the drug store by the administrator, were relied upon as creating just liabilities against the

estate, and were so presented to the said Probate Court, and received the approval of the said Court, and the claims were allowed, not through any character of collusion or concealment, but upon the open contention that as the drug store had all the time been the property of the estate, (as then developed) the estate should pay for its replenishing." (43-44.)

This excerpt from the answer is made because from the little proof put in by the appellants, its substantial truth is proven.

An old deposition of James Evans, taken in 1896, in the litigation in the State Court, was read. (61.) By this it is shown that a couple of days after the death of Hiram Evans, *all* the heirs met, and agreed that J. J. (John) Evans might have the drug store, *if he would pay all the indebtedness against it.*

That on this understanding with all the heirs, the administrator turned drug store over to J. J. Evans, who ran it some fourteen months, and turned it back to the administrator, because he had been unable to perform his part of the conditional sale and purchase. (62.)

Mr. R. J. Williams, representing the administrator, told him that J. J., would have to appear in

there (the store) as the agent of the estate, and that he should allow the claims.

The administrator took the drug store back on the ground that the estate had never parted with the title, and proceeded to run it himself for the estate. (64.)

Some $16,000 or $17,000 in cash was divided between the heirs a few days after the intestate's death. (67.)

The deceased owed something over $4,000 at the time of his death. (51.)

Slight as the above testimony is, it is ample to disclose the theory upon which the claims for goods sold the drug store while J. J. Evans was in charge, were allowed by the Probate Court.

The administrator had resumed control of the store, upon the ground that it had all the time been the property of the estate. In retaking the store he took it as it stood, kept up by purchases made by J. J. Evans, the ostensible owner, from these defendants. The apparent ownership had been a basis of credit for J. J. Evans, and when it was retaken by the administrator—a trustee for heirs as well as creditors—these defendants (appellees) insisted that the estate should pay for the goods with which it had been kept up.

The other course open for the administrator was to waive the conditional character of the sale to J. J. Evans, and let his creditors make their money out of the store. Mr. R. J. Williams, attorney for the administrator, advised him to take the store back, and subsequently advised him to allow the claims for goods with which it had been from time to time replenished. The equity of defendants to be paid by the estate, under the circumstances, was obvious; and it is not difficult to understand why an attorney should advise the allowance of the claims. A contrary course would have involved the administrator in litigation about the store. The claims (in suit here) were all alike—each resting on an equity common to all, and when that equity was recognized, with reference to one claim, the likeness of the others—and not collusion—caused the allowance of all.

And this equity in defendants to be paid by the estate, was absolutely binding upon *the heirs of H. Evans, because the possession and ostensible ownership of the store by J. J. Evans was with their express consent and approval.* (61.)

When heirs consent to irregularities in the management of an estate, they cannot afterwards complain, or avoid the consequences.

Poole vs Monday, 103 Mass., 174.

Perry vs Wooten, 5 Humph., 524.

Watkins vs Stewart, 78 Va., 111.

That creditors of the estate, at the time of the death of the intestate, would not have been bound by the course taken with the drug store, is quite true. But the parties here are heirs. They were also parties to the additional irregularity of dividing the $16,000 or $17,000 in cash, which should have gone into the hands of the administrator for the payment of debts. Result: a portion of the debts owed by the intestate, at his death, as well as the demands here in question, became charges against the real estate.

That the cause should be affirmed, is respectfully submitted.

R. W. NICHOLLS,

N. W. NORTON,

Counsel for Appellees.

McDANIEL *v.* TRAYLOR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

No. 70. Submitted January 12, 1909.—Decided February 23, 1909.

Where a number of claims are so tied together by combination or conspiracy as to make the relief sought in regard thereto one claim, the aggregate amount of such claims will be the test of jurisdiction of the Circuit Court; but if the plaintiff fails to prove such combination or conspiracy each claim must be regarded as separate, and, as to those which are less than $2,000, the Circuit Court has not jurisdiction.

An attorney must be the agent of all to bind all; and a plaintiff charging a conspiracy between certain claimants and an administrator

cannot satisfy the burden of proof which is on him to show that all conspired, by showing that the same person was attorney for several of the defendants, as no presumption exists that he was attorney for all from the fact that, as attorney for the administrator, he advised the payment of all the claims.

THE facts are stated in the opinion.

Mr. G. B. Webster and *Mr. J. R. Beasley* for appellants:

The Circuit Court erred in holding that it had no jurisdiction because the complainants failed to prove any joint act of two or more of the defendants tending to procure the fraudulent allowance of their claims.

The gravamen of the charge in the bill was that the defendants conspired with the administrator and thereby procured the allowances which otherwise would not have been made.

The evidence was that the attorney for the administrator advised the latter to allow all the claims while he was, unbeknown to the administrator, acting as attorney for one of the claimants. The present record discloses Williams as the attorney for all of those claimants, including that one which he then secretly represented. These facts justify the conclusion that in procuring the administrator to allow as expenses of administration what were not valid claims of any nature, he was acting for all whose claims were so allowed. If he was, then his act was their joint act because done in their business and for their benefit. *Bethel Church* v. *Carmack*, 2 Md. Ch. 143; *Chambers* v. *Hodges*, 23 Texas, 104; *I. P. & C. R. R.* v. *Tyng*, 63 N. Y. 653; *Griswold* v. *Gebbie*, 126 Pa. St. 353; *Craig* v. *Ward*, 2 Keyes, 287.

The law only requires the highest quality of proof possible. Where the fact to be proved rests in the knowledge of the other party and he stands silent when evidence is given of other facts from which the ultimate fact to be proved may reasonably be inferred, it is to be considered as sufficiently proven. Greenleaf, Evidence (16th ed.), § 79; 1 Starkie, Evidence, 54; *Lehman* v. *Knapp*, 48 La. Ann. 1148; *S. C.*, 20 So. Rep. 674;

Commonwealth v. *Webster*, 5 Cush. 316; *Heath* v. *Waters*, 40 Michigan, 457; *Conn. M. L. Ins. Co.* v. *Smith*, 117 Missouri, 261; *Mabary* v. *McClurg*, 74 Missouri, 575; *Runkle* v. *Burnham*, 153 U. S. 225; *Choctaw & M. R. Co.* v. *Newton*, 140 Fed. Rep. 238; *Gulf, C. & S. Ry.* v. *Ellis*, 54 Fed. Rep. 481; *Pac. C. S. Co.* v. *Bancroft W. Co.*, 94 Fed. Rep. 180; *Kirby* v. *Talmadge*, 160 U. S. 379.

In a case of this nature the value of the property upon which the invalid lien rests rather than the amount involved in the lien, is the true test of jurisdiction. The judgment allowing these claims is a cloud upon complainants' title. *Smith* v. *Adams*, 130 U. S. 175; *Parker* v. *Morrill*, 106 U. S. 1. Both are followed in *Simon* v. *House*, 46 Fed. Rep. 317.

In a suit to quiet title it is not the value of the defendant's claim that constitutes the amount in controversy; it is the value of the whole of the real estate to which the claim extends. *Woodside* v. *Ciceroni*, 93 Fed. Rep. 1; *Smith* v. *Adams*, *supra*, was also followed in *Cowell* v. *Water Supply Co.*, 121 Fed. Rep. 53.

In the state courts, by the weight of authority, the rule is the same. *Fuller* v. *Grand Rapids*, 40 Michigan, 395; *Scripture* v. *Johnson*, 3 Connecticut, 211; *Simon* v. *Richard*, 42 La. Ann. 842; *Kahn* v. *Kerngold*, 80 Virginia, 342; *Ayers* v. *Blair*, 26 W. Va. 558.

Mr. N. W. Norton and *Mr. R. W. Nichols* for appellees.

Mr. Justice McKenna delivered the opinion of the court.

This is the second appeal in this case. The first appeal was on a question of jurisdiction, and is reported in 196 U. S. 415. The object of the suit is to set aside and to declare invalid the liens of certain judgments of the Probate Court of St. Francis County, Arkansas, upon certain real estate, and that the defendants be enjoined from enforcing such judgments. The judgments were rendered upon claims against the estate of Hiram Evans, deceased.

James Evans was appointed administrator of the estate. Among the assets which came to his hands was a drug store, with its stock of goods, fixtures, book accounts and other things, which he sold to John Evans on the first of May, 1891. The latter conducted the business in his own name and incurred obligations to the defendants aggregating $3,000.00, as well as debts and obligations to other persons, but no single one of his debts exceeded $2,000.00. John Evans became insolvent, and on May 27, 1892, transferred to the administrator the drug store and all that remained of the goods, fixtures and book accounts. The bill alleged that the defendants "conspired, colluded and confederated together with John Evans and the administrator to secure the payment of their claims and demands against John Evans out of the estate of Hiram Evans, deceased," and, "so conspiring and confederating," they presented to the Probate Court their several claims and demands, and that the administrator, James Evans, fraudulently and illegally approved them for allowance against the estate of Hiram Evans. And for like purpose, it was alleged, they procured the judgment of the Probate Court, establishing their claims by concealing from the court that they were debts and obligations of John Evans and "cloaking the same under the name of expenses of administration of the said estate, all of which transactions were a part of the same scheme and were participated in by each and all of the said defendants and by said John Evans and James Evans, administrator." It was further alleged that the judgments were wholly the result of the conspiracy and confederation set out and the fraud practiced in pursuance thereof, and are in equity and good conscience void and ineffectual for any purpose whatever, and ought not to be enforced, but that, nevertheless, the same are at law "liens upon the real estate" described in the bill, "and charges against the respective interests of the plaintiffs." There were other allegations showing that plaintiffs could only obtain relief in equity.

The Circuit Court sustained a demurrer to the bill, being of

opinion that the value of the matter in dispute was not sufficient to give jurisdiction. On appeal to this court, we said, defining the matter in dispute and its value:

"The matter in dispute is whether the lands in which the plaintiffs have a joint undivided interest of one-half can be sold to pay *all* the claims, *in the aggregate*, which the defendants, by *combination and conspiracy*, procured the Probate Court to allow against the estate of Hiram Evans. The essence of the suit is the alleged fraudulent combination and conspiracy to fasten upon that estate a liability for debts of John Evans, which were held by the defendants and which they, acting in combination, procured, in coöperation with James Evans, to be allowed as claims against the estate of Hiram Evans. By reason of that combination, resulting in the allowance of all those claims in the Probate Court, as expenses of administering the estate of Hiram Evans, the defendants have so tied their respective claims together as to make them, so far as the plaintiffs and the relief sought by them are concerned, *one* claim."

And we further said:

"That it was competent for the Circuit Court upon the case made by the bill to deprive the defendants, acting in combination and claiming the benefit of the orders made in the Probate Court allowing their respective claims. That the value of the matter in dispute in the Circuit Court was the aggregate amount of all the claims so allowed against the estate of Hiram Evans."

The decree of the Circuit Court was reversed with directions to set aside the order dismissing the bill and to overrule the demurrer.

Upon the return of the case to the Circuit Court defendants answered, and the court, after hearing evidence, found that there was a "total failure to establish the fact alleged in the bill, that the said defendants or any two or more of them, whose claims in the aggregate exceeded the sum of $2,000, exclusive of interest, conspired and confederated together in procuring

the allowance of said claims, and therefore the court is without jurisdiction."

On this ruling errors are assigned, and it is contended (1) that an actual conspiracy was not necessary where the action and conduct of the defendants, acting by and through their attorneys with the attorney of the administrator, were such as to procure the fraudulent allowance of the claims; (2) that the true test of jurisdiction in a proceeding of this kind is the value of the property upon which the inequitable liens rest, and not the amount of such liens.

The first proposition was decided adversely to appellants' contention on the former appeal. As we have already seen, it was the fraudulent combination and conspiracy which united the claims and made the aggregate of the claims the matter in dispute. By reason of that combination we decided the claims were "so tied" together as to make them, "so far as the plaintiffs and the relief sought by them are concerned, *one* claim." We further decided, "the validity of all the claims depends upon the same facts. The lien on the lands which is asserted by each defendant has its origin as well in the combination to which all were parties as in the orders of the Probate Court, which, in furtherance of that combination, were procured by their joint action. Those orders were conclusive against the plaintiffs, as to all the claims, if the claims could be allowed at all against the estate of Hiram Evans. A comprehensive decree by which the plaintiff can be protected against those orders will avoid a multiplicity of suits, save great expense and do justice. If the plaintiffs do not prove such a combination and conspiracy, in respect, at least, of so many of the specified claims as in the aggregate will be of the required amount, then their suit must fail for want of jurisdiction in the Circuit Court; for, in the absence of the alleged combination, the claim of each defendant must, according to our decisions, be regarded, for purposes of jurisdiction, as separate from all the others." With this ruling the decision of the Circuit Court was accurately in accord.

But the finding of the court, that there was no combination between defendants having claims to the jurisdictional amount, is contested. "The specific and material charge is," counsel say, "that there was an agreement or understanding between the defendants on the one hand and the administrator on the other." And it is contended further that parties may "conspire through their attorneys as well as in person." This may be conceded, but the attorney must be the agent of all to bind all, and the testimony does not establish such agency. It shows only that the attorney for one of the claimants was also the attorney for the administrator and advised him to allow all the claims. It is not shown that he was the attorney of any other claimant. It is, however, contended that it must be presumed that he was attorney for all from the fact of his having advised the payment of all, and from the fact that he is the attorney for several of the claimants in this case. The presumption cannot be made. It was easy for appellants to have shown that he was the attorney for the other claimants. He and they were available witnesses, and as the burden was upon appellants to establish the charge of the conspiracy, which was the foundation of the suit, the presumptions are against appellants' contention rather than for it.

Decree affirmed.